IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT A LEHRMAN
550 – 23RD ST APT 6
BETTENDORF IA 52722

JOHN Q HAMMONS HOTELS LP
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-06124-HT
OC: 05/09/04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, John G. Hammons Hotels LP (Hammons), filed an appeal from a decision dated May 24, 2004, reference 01. The decision allowed benefits to the claimant, Robert Lehrman. After due notice was issued a hearing was held by telephone conference call on June 29, 2004. The claimant participated on his own behalf. The employer participated by Human Resources Manager Jill Julius.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Robert Lehrman was employed by Hammons from January 26, 2001 until May 10, 2004. He was a full-time public attendant. He had received a written warning on September 7, 2003, for being no-call/no-show to work the day before. He also received a counseling on May 6, 2004, because of a guest complaint of rudeness. This was a final warning and notified him his job was in jeopardy.

In mid-April the claimant had requested to be off the weekend of Mother's Day, May 8 and 9, 2004. When the schedule was posted the week before, he was scheduled to work at 4:00 p.m. on Sunday, May 9, 2004. He talked to Executive Housekeeper Jim Friese and Assistant Executive Housekeeper Becky Worton on May 6, 2004, reminding them he had requested the weekend off. Mr. Friese met with him again the next day and attempts were made to find a replacement, without success. Mr. Lehrman was told to contact Mr. Friese before he left on Saturday to find out if he was still scheduled to work on Sunday.

The claimant maintained he had tried to call several times to the main switchboard, but the line was busy. However, there are approximately 15 lines into the hotel and it is very rare for all of them to be busy at once. Mr. Lehrman stated he tried again on Sunday to contact Mr. Friese but again the lines were busy. He did not return until Monday, May 10, 2004, at which time he went immediately to the hotel and met with Human Resources Manager Jill Julius and Ms. Worton. They asked him why he did not call and at that time he did not tell them he had tried but the lines were busy, he simply told them he did not call. He was discharged for another no-call/no-show.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code Section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as

> is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for excessive, unexcused absenteeism. The record establishes only two unexcused absences during the course of his employment, September 6, 2003 and May 9, 2004. The final absence appears to have been based on the claimant's assumption his request for vacation, initially denied, had been granted. The administrative law judge does not find his assertion that he attempted to call in a dozen times and got a busy signal each time, to be credible. He did not call in to report his absence based on the belief he had been given the day off. While this is still constitutes a no-call/no-show to work, it is questionable whether it was intentional. Without further evidence from the employer to establish willful misconduct, disqualification may not be imposed.

DECISION:

The representative's decision of May 24, 2004, reference 01, is affirmed. Robert Lehrman is qualified for benefits provided he is otherwise eligible.

bgh/kjf