

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**FRED M STURDEVANT**

Claimant

**APPEAL NO. 11A-UI-07507-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**

Employer

**OC: 04/17/11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated May 18, 2011, reference 01, that concluded the he was discharged for work-connected misconduct. A telephone hearing was held on July 6, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Kuiper participated in the hearing on behalf of the employer with a witness, Emily Jones. Exhibits One through Four and A-1 were admitted into evidence at the hearing.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as an engineer on the overnight shift from February 4, 2010, to April 11, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required, employees were required to notify the employer two hours before the start of their shifts if they were not able to work as scheduled, and employees were subject to termination for reaching nine attendance occurrences.

The claimant was warned on December 9, 2010, because he had six occurrences. He was warned on April 10, 2011, after he was absent from work without proper notice to the employer on April 2, which put him at 8.5 occurrences. He was informed at that point if he received another occurrence, he would be discharged.

The claimant was scheduled to work at 11:00 p.m. on April 11. He overslept and arrived at work at 11:24 p.m. He did not call in to notify the employer that he was going to be late for work. The claimant explained that he had overslept due to a new medication he was taking for mental health issues but did not present evidence from a doctor that a health condition caused his absenteeism and tardiness.

An unemployment insurance decision was mailed to the claimant's last known address of record on May 18, 2011. The decision concluded he was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 28, 2011.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal by fax on May 19, 2011. When he did not hear anything about his appeal, he contacted Workforce Development Department on June 7, 2011, and discovered the appeal had not been received, so he immediately faxed in another appeal on that day.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. I conclude that the claimant's appeal should be deemed timely because he faxed it within the time for appealing, but due to some error the appeal was not transmitted. He immediately appealed again when he discovered the appeal was not received.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant's excessive unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant attributed his final tardiness to his medication but presented no evidence from a doctor to establish this. He had no excuse for not calling the employer immediately to notify the employer that he was going to be late, which is particularly serious because he had just been warned about a no-call, no-show the day before.

**DECISION:**

The unemployment insurance decision dated May 18, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw