

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARA R HEMM**  
Claimant

**APPEAL NO. 07A-UI-03641-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOC SERVICES LLC**  
Employer

**OC: 03/11/07 R: 04  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Barbara R. Hemm filed a timely appeal from an unemployment insurance decision dated March 29, 2007, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held April 24, 2007 with Ms. Hemm participating. Human Resources Manager Associate Sara Frank and Beverage Manager Linda Tanner participated for the employer, IOC Services. Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**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: Barbara R. Hemm was employed by IOC Services from June 10, 1997 until she was discharged February 8, 2007. She last worked as a bartender. IOC Services operates a gambling casino. Ms. Hemm was required to display a gaming badge when she worked. She was scheduled to pick up her renewed badge at 10:00 a.m. on February 7, 2007. The employer had notified her of this approximately a week earlier.

Ms. Hemm forgot to do so. She was distracted due to the fact that her sister was in a local hospital, dying of cancer. She had been absent on several occasions because of her sister's health. She had also been tardy on October 13, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

The question for the administrative law judge is not whether the employer was justified in discharging Ms. Hemm. The question here is whether the reason for discharge constitutes misconduct as that term is defined for unemployment insurance purposes. For the reasons which follow, the administrative law judge concludes that the evidence does not establish misconduct.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof. See Iowa Code section 96.6-2.

The evidence establishes that Ms. Hemm failed to pick up her badge on February 7, 2007 and also failed to notify the employer that she would not be able to pick it up at the scheduled time. The evidence also establishes a tardiness in October. All other absences occurred after notification of the employer. The administrative law judge concludes that the claimant's absence on February 7 was not willful but the result of her preoccupation with her sister's serious illness and impending death. While technically an unexcused absence, the administrative law judge concludes that the evidence as a whole falls short of establishing a pattern of willful attendance violations. No disqualification shall be imposed.

**DECISION:**

The unemployment insurance decision dated March 29, 2007, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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