

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J LAWSON
Claimant

APPEAL NO. 07A-UI-03866-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

**OC: 03-11-07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 5, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 1, 2007. The claimant did participate. The employer did participate through Carrie Buckley, Senior Employee Relations representative.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a lead cook full time beginning February 2, 2005 through January 26, 2007, when he was discharged.

The claimant arrived late to work on January 25, 2007, and when he did arrive he did not have his gaming license with him. All employees who work in the casino know that in order to work in the building, they must have their gaming license, as it is a requirement of the Iowa Racing and Gaming Commission. The claimant also did not have any other identification, such as his driver's license, that would have allowed the employer to issue him a temporary license and would have allowed him to work his shift.

The claimant left to go retrieve his gaming license or identification and returned several hours later. When he returned with the proper identification the manager told him to clock in and begin working, as the establishment was busy. The claimant asked if his tardiness would effect his employment and was told that the manager would check with human resources department. The claimant, believing he would be fired based on his attendance history in conjunction with

the latest incident of tardiness, walked off the job and refused to continue working. At the time the claimant walked off the job, continued work was available for him. The claimant was discharged the next day for refusing to work when instructed to do so.

The claimant had a clear history of absenteeism and was given numerous warnings about his attendance. His last warning was on December 9, 2006 and the claimant was warned that another incident of tardiness or absenteeism would lead to his discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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(7) provides:

(7) 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. The claimant clearly knew that he needed to have his gaming license or identification in order to work. His tardiness due to his inability to find his identification or license is misconduct. Additionally, the claimant's refusal to work when instructed to do so amounts to misconduct sufficient to disqualify him from receipt of benefits. Benefits are withheld.

DECISION:

The April 5, 2007, reference 02, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw