

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**WAIL NOURELDIN**  
Claimant

**APPEAL NO. 18A-UI-08357-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CANTILEVER HOTELS LLC**  
Employer

**OC: 10/22/17  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cantilever Hotels (employer) appealed a representative's July 30, 2018, decision (reference 15) that concluded Wail Noureldin (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 27, 2018. The claimant participated personally. The employer participated by Gregory Waddle, Human Resources Manager; Nataly Terz, Head Housekeeper; Kimberly Morgan, Task Force Manager; Casandra Anderson, Food and Beverage Director; and Korey Woodbury, General Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 15, 2017, as a part-time front and back of the house. He signed for receipt of the employer's handbook on November 16, 2017. The claimant's supervisor told him personally how to report his absences and gave him the telephone number to call. Employees were to report their absences at least two hours prior to the start of the shift.

On April 13, 2018, employer issued the claimant warnings for inappropriate behavior on April 13 and 20, 2018. On June 4, 2018, the employer issued the claimant a warning for failure to appear for work or report his absence on May 5, 2018. On June 8, 2018, a different supervisor gave the claimant another warning for his inappropriate behavior on April 13, 2018. Also on June 8, 2018, the employer gave the claimant a warning for tardiness on April 20, 2018. The claimant was seventy minutes late. The employer notified the claimant that further infractions could result in termination from employment.

On July 12, 2018, the claimant did not appear for work or notify the employer of his absence. On July 14, 2018, the claimant was ninety minutes late for work. Once when he was late, the

claimant told his supervisor he overslept. The employer terminated the claimant on July 14, 2018, for excessive absenteeism without proper notice.

The claimant filed for unemployment insurance benefits with an effective date of October 22, 2017. He did not receive any unemployment insurance benefits after the separation from employment. The employer participated personally at the fact finding interview on March 27, 2018, by Korey Woodbury.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The representative's July 30, 2018, decision (reference 15) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs