

**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**

**MICHAEL D DOSS
PO BOX 986
WATERLOO IA 50704**

**HIGHWAY 63 DINER INC
PO BOX 969
CEDAR FALLS IA 50613-0969**

**Appeal Number: 04A-UI-08545-CT
OC: 07/11/04 R: 03
Claimant: Respondent (2)**

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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Highway 63 Diner, Inc. (Diner) filed an appeal from a representative's decision dated July 30, 2004, reference 01, which held that no disqualification would be imposed regarding Michael Doss' separation from employment. After due notice was issued, a hearing was held by telephone on September 29, 2004. The employer participated by Jason Thomas, Manager. The hearing notice sent to Mr. Doss on September 1, 2004 at his last known address of record was returned by the postal service with a notation that there was no forwarding order on file. Mr. Doss did not notify Workforce Development of an address change until October 1, 2004.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Doss was employed by Diner from October 30, 2003 until May 14, 2004 as a part-time cook working from 15 to 25 hours each week. He was discharged because of his attendance.

Mr. Doss was one hour late on April 16 and, as a result, received a verbal warning. During the last two months of his employment, he was approximately 15 minutes late for 5 of 25 shifts. He last worked on May 8, 2004. The final incident which caused his discharge was the fact that someone called to report that he would be absent on May 13 because he was in jail in Des Moines. The employer checked and there was no record of his incarceration. The next day, Mr. Doss' girlfriend was told that, if he was going to lie about his whereabouts, he no longer had a job. Mr. Doss did not contact the employer in response to the message. The employer did not hear further from him until he came to get his paycheck approximately one week later.

Mr. Doss has received a total of \$1,032.00 in job insurance benefits since filing his claim effective July 11, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Doss was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Doss was discharged because of his attendance. He had received a verbal warning in April concerning his tardiness. In spite of the warning, he continued to accumulate occasions of tardiness. He was at least 15 minutes late for 5 of his last 25 shifts. The administrative law judge considers this excessive. The evidence does not establish any good cause for the tardiness and, therefore, it is considered unexcused.

In addition to his excessive tardiness, Mr. Doss also gave false information concerning his absence of May 13. The employer left him a message indicating the employer's belief that he had lied about his incarceration. He did not contact the employer to advise that there was a misunderstanding or to in any way correct the employer's belief that he had given false information as to the reason for his absence. Even if Mr. Doss was in jail in a different city than the one that was reported to the employer, the fact remains that the absence was reported to be due to incarceration. Inasmuch as this was a personal matter, the absence would be considered unexcused. This final unexcused absence, when combined with Mr. Doss' excessive unexcused tardiness, is sufficient to establish disqualifying misconduct. Accordingly, benefits are denied.

Mr. Doss has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated July 30, 2004, reference 01, is hereby reversed. Mr. Doss was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Doss has been overpaid \$1,032.00 in job insurance benefits.

cfc/kjf