

**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**

**ERIC J PARHAM
1009 S 7TH ST
BURLINGTON IA 52601-5939**

**MARTINI'S GRILLE LLC
STE 400
610 N 4TH ST
BURLINGTON IA 52601**

**Appeal Number: 06A-UI-04560-HT
OC: 04/02/06 R: 04
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant, Eric Parham, filed an appeal from a decision dated April 21, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 15, 2006. The claimant participated on his own behalf. The employer, Martini's Grille, participated by Executive Chef Matt Stallman and Line Chef Brandon Mandrell.

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: Eric Parham was employed by Martini's Grille from January 21, 2005 until April 1, 2006. He was a full-time line chef.

The claimant had been verbally warned by Executive Chef Matt Stallman about his attendance. Mr. Parham was frequently late to work due to transportation problems. Starting March 27, 2006, Mr. Stallman began to document his attendance formally and issued written warnings on that date and on March 29, 2006, for tardiness. He also talked with the claimant when the first written warning was given to tell him he would be "okay" if his attendance, attitude and work performance improved, but it did not.

Mr. Parham was late to work on March 21, 2006, and the employer intended to notify him on April 1, 2006, he was being suspended. However, before the suspension could be issued, Mr. Stallman heard the claimant complaining on the line about his hours. He said to another line cook, Blaine Potts, that "this is bullshit, I'm not getting my hours cut for these new motherfuckers." Others were able to hear the claimant's comments from a distance of around 30 feet as well. At that point, Mr. Stallman asked him why he should get more hours when he was tardy so frequently, and the claimant stated his tardiness had "nothing to do with it."

Mr. Stallman considered the claimant's attendance issues and his "disrespect" for the employer on the line, and discharged him at the end of the shift on April 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant had been advised his job would be “okay” if he improved his attendance, attitude and work performance, but he did not do this. After the counseling and the first written warning, he was tardy several more times due to transportation, personal business and mis-reading the schedule. Matters of purely personal consideration, such as transportation, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). In addition to the continued tardiness, the claimant was hostile and used disrespectful language in the workplace about his supervisors. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative’s decision of April 21, 2006, reference 01, is affirmed. Eric Parham is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/kkf