

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA VAUGHN**  
Claimant

**APPEAL NO. 08A-UI-06027-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 05-25-08 R: 12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 25, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 16, 2008. The claimant participated in the hearing. Emily Jones, Team Relations Manager; Tiffany Sheppard, Assistant Manager; and Jerry Sander, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time restaurant cashier for Ameristar Casino Council Bluffs from October 25, 2005 to May 28, 2008. The employer's attendance policy allows eight occurrences within a rolling 12-month period before termination. A properly reported absence results in the loss of one star; an improperly reported absence results in the loss of one and one-half stars; a properly reported incident of tardiness results in the loss of one-half star; an improperly reported incident of tardiness results in the loss of one star; and an early out results in the loss of one-half star. Employees are required to call in at least two hours before the start of their shift and receive formal written warnings at five, three and one stars. On January 6, 2007, the claimant was scheduled to work at 10:00 a.m. She called at 8:45 a.m. to say she would not be in but did not provide a reason for her absence. On January 9, 2007, the claimant was scheduled to work at 10:00 a.m. She called at 8:36 a.m. to say she would not be in but did not provide a reason for her absence. On June 13, 2007, the claimant was scheduled to work at 5:00 a.m. and called at 5:00 a.m. to say she would not be in but did not provide a reason for her absence. On June 16, 2007, she called and properly reported she would not be in due to illness. On June 22, 2007, the claimant was scheduled to work at 5:00 a.m. and called at 5:00 a.m. to say she would not be in because she was ill. On June 30, 2007, the claimant was scheduled to work at 5:00 a.m. and called at 4:30 a.m. to say she would not be in because she was ill. On July 26, 2007, the claimant was scheduled to work at 5:00 a.m. and called at

6:51 a.m. to say she would be late because she overslept. On January 11 and 12, 2008, she called and properly reported she would not be in due to illness. On January 22, 2008, the claimant was scheduled to work from 5:00 a.m. to 1:00 p.m. but left at 9:45 a.m., possibly due to illness. On February 6, 2008, the claimant was scheduled to work at 5:00 a.m. and called at 6:57 a.m. to say she would be late because she overslept. On May 28, 2008, the claimant was scheduled to work at 5:00 a.m. and called at 6:00 a.m. to say she would be late because she overslept and the employer terminated her employment for exceeding the allowed number of attendance occurrences. The claimant received formal improvement coaching warnings June 22, 2007 and January 11, 2008, and a last and final warning January 22, 2008.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

871 IAC 24.23(13) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(13) If a claimant is visiting in another area and is not in the labor market.

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). The claimant was absent or tardy on nine occasions, not including properly reported illnesses, between January 6, 2007 and May 28, 2008. 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 absenteeism, is considered excessive. Benefits are denied.

### **DECISION:**

The June 25, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time

as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css