

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA M HOFER
Claimant

APPEAL NO. 07A-UI-02009-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AMERISTAR CASINO COUNCIL
BLUFFS INC**
Employer

**OC: 01/21/07 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ameristar Casino Council Bluffs, Inc. (Ameristar) filed an appeal from a representative's decision dated February 16, 2007, reference 02, which held that no disqualification would be imposed regarding Melissa Hofer's separation from employment. After due notice was issued, a hearing was held by telephone on March 13, 2007. Ms. Hofer participated personally. The employer participated by Shila Kinsley, Team Relations Coordinator; Sylvia Smith, EDS; and Seung Kim, EDS Manager. Exhibits 1 through 16 were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Hofer was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hofer was employed by Ameristar from September 6, 2005 until January 29, 2007. She was employed full-time performing cleaning services. She was discharged because of her attendance.

With the exception of her absence of January 15, 2007, all of the absences that contributed to Ms. Hofer's discharge were due to her own illness or that of her child. She was absent on January 15 because she was in a minor auto accident on the way to work. She was not able to give the required two hour's notice on this occasion. All of her remaining absences were properly reported. Ms. Hofer had received several warnings advising that her employment was in jeopardy because of her attendance. She went home early due to illness on January 21 and called in sick on January 22. As a result of these final absences, Ms. Hofer was discharged on January 29, 2007. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

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). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

The administrative law judge concludes that all of Ms. Hofer's absences were excused as they were all for reasonable cause. All of the absences were properly reported except that of January 15, 2007 when Ms. Hofer had an accident on her way to work. Since she was planning on being at work, she could not have known two hours in advance that she would be involved in an accident that would prevent her from reporting to work. Even if the administrative law judge were to conclude that the January 15 absence was unexcused, it would not be a current act of misconduct in relation to the January 29 discharge date.

Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Inasmuch as the employer failed to establish excessive unexcused absenteeism, no disqualification is imposed.

DECISION:

The representative's decision dated February 16, 2007, reference 02, is hereby affirmed. Ms. Hofer was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css