

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

ANASTASIA G LEYPOLDT
816 N 36TH ST #B
OMAHA NE 68131-1965

AMERISTAR CASINO COUNCIL
BLUFFS INC
c/o TALX CORPORATION
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 06A-UI-04763-CT
OC: 04/09/06 R: 12
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 for Misconduct

STATEMENT OF THE CASE:

Anastasia Leypoldt filed an appeal from a representative's decision dated April 27, 2006, reference 01, which denied benefits based on her separation from Ameristar Casino. After due notice was issued, a hearing was held by telephone on May 18, 2006. Ms. Leypoldt participated personally. The employer participated by Shila Kinsley, Team Relations Coordinator; Christine Stuck, Beverage Manager; and Chris Hamblin, Directory of Security. The employer was represented by Diana Perry-Lehr of Talx Corporation.

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. Leypoldt began working for Ameristar Casino on

July 14, 2003 as a full-time beverage server. She was discharged as a result of her attendance. Attendance is tracked on a "star" (point) system in which points are deducted for certain absences. An individual is subject to termination when she exhausts all available points. An absence will fall off one year after it is incurred. The employer has a no-fault attendance program and employees are not required to give a reason for being absent.

Ms. Leypoldt was approximately two hours late due to oversleeping on January 15, February 11, and February 27, 2006. On March 20, 2006, she was 47 minutes late because she overslept. She had been previously warned about her attendance. Ms. Leypoldt knew on April 2, 2006, that she was one-half point from exhausting her points. She had 32 hours of available vacation time at that point. On April 3, she called to report that she would be absent but did not state a reason. Her grandmother was gravely ill and had been for at least the one week prior. Her death was imminent and relatives began arriving in Beatrice, Nebraska, where she lived. Ms. Leypoldt decided to take April 3 off to visit with her grandmother and other relatives. She did not attempt to use vacation time to cover the absence and did not discuss her circumstances with the employer. She was not scheduled to work on April 4 and 5. She called again on April 6 to report that she would be absent. Ms. Leypoldt did not call the employer thereafter because she assumed she no longer had employment because she was out of points. She was notified of her discharge on April 12, 2006. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Leypoldt 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). Ms. Leypoldt was discharged because of her attendance. An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

During a period of approximately two months, January 15 through March 20, Ms. Leypoldt was late on four occasions, all due to oversleeping. The tardiness was not by mere minutes but by almost 2 hours on 3 occasions and 47 minutes on the 4th. In spite of knowing her point status on April 2, Ms. Leypoldt took time off for personal matters on April 3. She had advance notice of her grandmother's ill health and could have asked to take vacation time to cover the time she wanted to spend with family. She could have discussed her circumstances with the employer to see if there was some alternative to using her attendance points. Moreover, Ms. Leypoldt was scheduled off on April 4 and 5 and had those days to spend with her family. She went to Beatrice on April 3 and returned to her home in Omaha before returning to Beatrice at the end of the week. This factor suggests that she did not feel it was necessary that she remain with the family at all times commencing April 3.

Ms. Leypoldt was on notice that she was in danger of losing her job. In spite of the warnings, she accumulated four occasions of tardiness due to oversleeping within the three months before her separation. She used her last available one-half point for a personal matter when she had other potential options. The administrative law judge appreciates that she wanted to spend time with her family because of her grandmother's imminent death. However, she did not make any good-faith effort to have the time off without resorting to exhausting her points.

Ms. Leypoldt's attendance constituted a substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated April 27, 2006, reference 01, is hereby affirmed. Ms. Leypoldt was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kkf