

**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**

**MARILYN BECKWITH
15212 WASHINGTON ST
OMAHA NE 68137-3820**

**AMERISTAR CASINO COUNCIL BLUFFS
C/O EMPLOYERS UNITY INC
PO BOX 749
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-03890-ET
OC: 03-12-06 R: 12
Claimant: Respondent (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/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 28, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 26, 2006. The claimant participated in the hearing. Shila Kinsley, Human Relations Coordinator; Gary Warner, Casino Manager; and Beth Crocker, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time dealer for Ameristar Casino from April 23, 2002 to January 17, 2006. Employees start with eight attendance "stars," which are subtracted for absences or incidents of tardiness. The claimant started 2005 with six stars. She was absent January 31, 2005 to February 2, 2005, due to properly reported illness and received a reduction of one star (Employer's Exhibit One, Page 13). She was absent due to properly reported illness April 17, 2005, and received a reduction of one star (Employer's Exhibit One, Page 11). She was absent due to properly reported illness May 16, 2005, and received a reduction of one star (Employer's Exhibit One, Page 10). She was absent June 12, 2005, and received a reduction of one star. She was absent September 3, 2005, to September 5, 2005, due to properly reported illness and received a reduction of one point. She was absent due to properly reported illness January 16, 2006, and received a reduction of one star and her employment was terminated January 17, 2006 (Employer's Exhibit One, Page 2 and Page 1). The claimant was tardy three times and left early due to illness three times. She received written warnings about her attendance March 5, 2004; August 12, 2005; and September 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did exceed the allowed number of absences, at least five of those absences, including the last one and the three occasions she left early, were due to properly reported illness of herself or her child. Because the final absence for which she was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The March 28, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/tjc