IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WENDY S HATHAWAY
Claimant

AMERISTAR CASINO CO BLUFFS INC
Employer

APPEAL NO. 08A-UI-02941-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/24/08 R: 01
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 14, 2008. Claimant participated. Employer participated through Chris Hamlin, Emily Jones and was represented by Tom Kuiper of Unemployment Services LLC.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time security officer from March 14, 2006 until February 21, 2008 when she was discharged. She had been under medical care since late December 2007 to monitor a blood clot in her head and had submitted paperwork for Family Medical Leave Act (FMLA) leave. Her last day of work was February 19 when she became seriously ill (headache, blurry vision, weakness on one side) at work and was sent home in a taxi after employer's EMT would not take her to her preferred hospital where her doctor practices. She did not direct the taxi to take her to the hospital. She took her pain medication, rested and could not see the number of the security dispatch so called the main number generally reserved for customers since it was on speed dial. Each of the three times she was not transferred to the security supervisor Don Hansen even though she gave her name on the second call attempt. On February 20 she tried to call again since she was medically unable to work and asked the operator to give a message to Hansen since her calls were being disconnected before reaching him. She did not call on February 21 as she was under the impression she was already fired on February 19 when she arrived home without her badge and after Hamlin said he was "not going to play her games." She did not attempt to contact employer to verify her employment status after February 20 and employer did not contact her. Employer considered her a no-call/no-show on February 20 and 21 and would have given her

an attendance warning had she returned to work. Claimant did not see her doctor until a scheduled appointment on February 22, 2008. Employer had warned her about attendance earlier but all were related to reported illness other than a December 6, 2007 incident of tardiness due to oversleeping. Employer has a no-fault attendance policy that considers an employee to have voluntarily quit upon the third consecutive no-call/no-show absence. She was fired on February 21, the second alleged no-call/no-show absence, since she had exhausted all attendance points by then.

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 § 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.

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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer’s no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, claimant made reasonable attempts to call employer about her continued illness on February 19 and 20 and her one unexcused absence because of a no-call/no-show on February 21 is not disqualifying since it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The March 18, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css