IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SARA L LEMLEY
Claimant

RIVERSIDE CASINO AND GOLF RESORT
Employer

APPEAL NO. 08A-UI-02194-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/27/08 R: 03
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sara Lemley filed an appeal from a representative's decision dated February 25, 2008, reference 02, which denied benefits based on her separation from Riverside Casino and Golf Resort (Riverside). After due notice was issued, a hearing was held by telephone on April 2, 2008. Ms. Lemley participated personally. The employer participated by Kris Bridges, Human Resources Business Partner, and Tracy Miller, Cage Count Manager.

ISSUE:

At issue in this matter is whether Ms. Lemley 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. Lemley was employed by Riverside from September 24, 2007 until January 26, 2008 as a full-time cage cashier. She was discharged because of her attendance.

Ms. Lemley was approximately 15 minutes late on October 5 because her ride to work did not show up on time. She was approximately ten minutes late on October 7 for unknown reasons. She presented a doctor's excuse for her absences of October 28, 29, and 30. Ms. Lemley received her first warning on November 10. She was absent on December 26 and January 10 for unknown reasons. Both absences were properly reported. She presented a doctor's excuse for her absences of January 3, 4, and 5. Ms. Lemley received her final warning on January 23.

Ms. Lemley called on January 25 to report that she would be absent because her grandfather had been involved in a car accident. He had several broken bones but his injures were not life-threatening. On the morning of January 26, Ms. Lemley called her supervisor, Tracy Miller, to see if she still had a job, since she had called in absent the day prior. She was at nine attendance points at the time of the January 23 warning and a tenth point could subject her to discharge. After she was told the absence was due to the grandfather's car accident, Ms. Miller

said she would speak with someone the following Monday about whether Ms. Lemley would be discharged as a result of the absence.

During the call of January 26, Ms. Miller reminded Ms. Lemley that she was on the schedule to work at 11:30 p.m. that day. Ms. Lemley indicated she would not be in because her grandfather was scheduled for further testing. There would not have been any medical testing performed on her grandfather after 11:30 p.m. She was told she would not have a job if she did not report for work on January 26. Ms. Lemley indicated she would not be in and did not return to the job at any point thereafter. Attendance was the sole reason for the separation.

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. Tardiness in reporting to work is considered a limited absence from work.

Ms. Lemley had periods of unexcused absenteeism on October 5 and 7 when she was late reporting to work. She was clearly on notice as of January 23 that her attendance was jeopardizing her continued employment with Riverside. In spite of the warning, she was again absent on January 25. The administrative law judge appreciates that she had concerns about her grandfather after his car accident. However, he was hospitalized at least six hours before she was scheduled to be at work and, therefore, Ms. Lemley was not needed to provide care for him. Moreover, his injuries were not life threatening. Ms. Lemley could have spent several hours with her grandfather and still reported to work at 11:30 p.m. when, more likely than not, he would have been sleeping. The administrative law judge concludes that the absence of January 25 was for personal reasons. The same is true with respect to the absence of January 26. Although her grandfather was to have testing done on that date, Ms. Lemley's presence was not necessary for the testing. She had the entire day to be with him before reporting for her 11:30 p.m. shift. It was her choice not to report for her late-night shift, which was during times her grandfather would ordinarily be asleep.

Ms. Lemley knew on the morning of January 26 that there was a possibility the absence of January 25 would not result in discharge, given the circumstances. However, she did not give the employer the opportunity to determine if the absence would result in discharge. She preempted a decision from the employer by choosing not to report for work on January 26. She knew from the conversation with Ms. Miller that a failure to report on January 26 would definitely mean her discharge. In spite of this, Ms. Lemley still chose not to come to work on January 26.

Ms. Lemley had four periods of unexcused absenteeism during the last four months of her employment. The final absence of January 26 was a blatant disregard for the employer's standards, as Ms. Lemley had no reasonable cause for being absent and knew in advance that she would be discharged if she did not report for work that night. Given her relatively short period of employment with Riverside, the administrative law judge concludes that excessive unexcused absenteeism has been established by the evidence. As such, benefits are denied.

DECISION:

The representative's decision dated February 25, 2008, reference 02, is hereby affirmed. Ms. Lemley was discharged by Riverside 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.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw