

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH C TIGER GOMEZ

Claimant

APPEAL NO. 11A-UI-16281-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAND FALLS CASINO RESORT, LLC

Employer

OC: 10/09/11

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 6, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 24, 2012. Claimant participated. Employer participated by Pat Lund, Director of Human Resources; Kelly Pace, Director of Slots; and Billy Blake, Slot Operations Manager. Exhibits A and One were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer. The issue is whether the appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 8, 2011. Claimant quit in part because she could not stand the smoke in the work environment. Claimant had four sinus infections while working for employer. Claimant was aware that she would need to work in a smoking environment at the time of hire. Claimant quit because the secondhand smoke was detrimental to her health to a far greater degree than contemplated.

Claimant filed her appeal by fax on the due date. The fax transmission was lost for unknown reasons. Claimant re-filed upon actual notice of the lost fax.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because secondhand smoke in the work environment was detrimental to her health. The medical documentation weighs heavily toward a finding that claimant's health was negatively affected by the secondhand smoke. Official notice is taken of the fact that secondhand cigarette smoke is damaging to a person's health. Claimant did quit for good

cause attributable to employer because the secondhand smoke was detrimental to her health. Benefits allowed.

While claimant had multiple reasons for quitting, she need only prove one that is good cause attributable to employer for a quit.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

871 IAC 24.26(13) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

Claimant's appeal is timely as it was faxed on the due date. The lost fax transmission was not claimant's fault. This is a timely appeal.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that

the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

DECISION:

The decision of the representative dated December 6, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. Claimant's appeal is timely.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css