

**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**

**KATHLEEN P MOORE
22033 HILLSBORO N
CRESCENT IA 51526**

**HARVEYS IOWA MANAGEMENT CO INC
HARRAHS COUNCIL BLUFFS CASINO
1 HARVEYS BLVD
COUNCIL BLUFFS IA 51501**

**Appeal Number: 04A-UI-08563-LT
OC: 07-11-04 R: 01
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 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the July 30, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 30, 2004. Claimant did participate with Robert Moore, spouse. Employer did participate through Crystal McKeehan and Roy Bangart.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time black jack dealer through July 2, 2004 when she quit. On May 11 claimant went on break with Kent VanBreesen. He said hello to Mark Anderson and they shook hands. Anderson then said, “watch this,” picked claimant up and swung her in the air with her

chest against his face. On May 12, claimant told Roy Bangart about her discomfort with Anderson's actions and the matter was reported to human resources personnel, Crystal and Tanya Meyer. Claimant presented them with a written statement and witness names. Claimant also said she was worried about repercussions. Employer asked claimant if she felt so uncomfortable that they needed to remove him and she said no. Employer said they would try to make sure it would not happen again.

On May 12 after her shift claimant went to the locker area and passed by Tanya and Crystal in the hallway with Anderson joking and laughing. Employer acknowledged Tanya has a good working relationship with him. Claimant did not report this discomfort to Tanya or Crystal.

Thereafter, Anderson repeatedly walked in front of or behind claimant in the pit where she worked, speaking loudly enough so claimant would know he was there, even if her back was turned. When she would see Anderson's wife in the bathroom or break room she would intentionally physically bump into claimant.

Claimant was a no-call/no-show for about two days and was taken off the schedule, as employer believed she had quit. After reporting to work again, she told Crystal on June 14 that she felt as though she was being harassed. Employer assumed she meant she was harassed about being taken off the schedule and did not think it was about Anderson. Claimant did not explain further nor did Crystal ask for additional details. Claimant worked on June 15, 16 and 17, 2004. On June 16 Anderson's wife bumped into claimant in the bathroom and Anderson was speaking loudly behind claimant in her pit area, even though he is pit manager in another pit on the other side of the boat. Claimant made no complaints to employer after June 14, took a vacation beginning June 18 and did not return to work or give notice of her intention to quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991)(emphasis supplied).

While employer presented the appearance of impropriety while laughing and joking with Anderson in front of claimant and it had a duty to inquire further as to what claimant meant by "harassed," claimant should not have assumed employer knew to what she was referring (Anderson talking behind her in the pit and his wife physically bumping into her). Inasmuch as the claimant did not give the employer specific details of the continued harassment or an

opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

DECISION:

The July 30, 2004, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

dml/kjf