

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY L SPENCER
Claimant

APPEAL NO. 08A-UI-09320-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**1227 J AVENUE CORP
THE GREEN GABLE INN**
Employer

**OC: 09/14/08 R: 03
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Green Gable Inn, filed an appeal from a decision dated October 7, 2008, reference 01. The decision allowed benefits to the claimant, Holly Spencer. After due notice was issued a hearing was held by telephone conference call on October 29, 2008. The claimant participated on her own behalf. The employer participated by Manager Theresa Trimble.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Holly Spencer was employed by Green Gable Inn from November 25, 2007 until September 11, 2008 as a part-time bartender. Manager Theresa Trimble had been hired to “clean up” the bar and had imposed rules and regulations regarding conduct by the employees. Ms. Spencer had been counseled in the past about drinking while on duty.

On the morning of September 11, 2008, Ms. Trimble viewed the video from the night before on the surveillance cameras. She saw Ms. Spencer and the night manger, Luanne Silleck, pass a small white object between them and then the claimant went outside the bar. Later that day the manager had Ms. Silleck and the claimant come to the basement where the surveillance equipment was and showed them that incident. She intended to discuss various problems with them and issue a disciplinary action to both of them, but wanted to deal with the “small white object” first. When asked what was being passed they both said it was a small lighter. They were asked to produce it and Ms. Silleck went upstairs to get the lighter and brought it back down.

Ms. Trimble said she would have to accept that as being “self explanatory” and then tried to go on to the other subjects she wanted to discuss. She asked why they were spending more time outside the bar than inside it. At that point Ms. Silleck said she was tired of this “bullshit,” she was leaving and then headed up the stairs. Ms. Spencer said “wait” and then followed her

upstairs. They both gathered up their purses and were told by the manager if they were going to leave to "leave quietly." They did not, but stood in the parking lot exclaiming loudly about the incident until Ms. Trimble told them if they did not leave she would have to summon the police.

Holly Spencer has received unemployment benefits since filing a claim with an effective date of September 14, 2008.

REASONING AND CONCLUSIONS OF LAW:

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 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The claimant states she was fired when Ms. Trimble told her to "leave." The manager did tell her to leave but only after she had walked out of the meeting, following Ms. Silleck who said she had had it and was leaving. The employer did not intend to fire the two employees, only to write them up in an attempt to correct some of the problems in the bar. There is no evidence the claimant was fired but that she walked out with Ms. Silleck rather than remain and deal with the issues the employer wanted to discuss.

Leaving because of a reprimand is not good cause attributable to the employer under the provisions of the above Administrative Code section. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 7, 2008, reference 01, is reversed. Holly Spencer is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs