

**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**

**LINDA S BAUER
11863 HWY 2
PLANO IA 52581-08031**

**SOUTHERN IOWA GAMING COMPANY
LAKESIDE CASINO & RESORT
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OSCEOLA IA 50213**

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**Appeal Number: 04A-UI-02795-DT
OC: 02/01/04 R: 03
Claimant: Appellant (2)**

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-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

Linda S. Bauer (claimant) appealed a representative's March 2, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Lakeside Casino & Resort (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2004. The claimant participated in the hearing and was represented by Roger Kuhle, attorney at law. Mary Ann Towsley appeared on the employer's behalf and presented testimony from one other witness, Lynnette Bailey. During the hearing, Employer's Exhibits One and Two and Claimant's Exhibits A through J were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

After a brief prior period of employment, the claimant most recently started working for the employer on May 16, 2003. She worked full time as a count team member on the graveyard shift of the employer's casino. Her last day of work was January 21, 2004. She reported absences for illness for her next scheduled workdays of January 23, January 24, and January 26. On January 26, she submitted her notice of resignation. (Employer's Exhibit One.)

The claimant had been having some difficulty in her relations with a number of coworkers, with one in particular who had made inappropriate comments and contact with her. On December 15 she made a report to the employer; however, while the overt behavior did not reoccur, the situation involving the coworker remained tense for the claimant. On December 31, 2003, she made a formal complaint of sexual harassment against the coworker. (Claimant's Exhibit A.) The employer did investigate the allegations, but was unable to secure independent confirmation of the allegations. On January 19, 2004, the employer indicated that it could take no further action, but would attempt to keep the claimant and the coworker apart. While the two were not working together, there were still occasions where the coworker or friends of the coworker would do or say things for the claimant's "benefit" to taunt her.

Because of the situation at work, the claimant had been experiencing headaches, anxiety, and depression symptoms for which she had been receiving medical attention. Her doctor advised her to seek employment elsewhere because of the condition of her emotional health "due to the problems encountered at work." (Claimant's Exhibit F.) The claimant had seen her doctor on January 21 due to a severe headache, at which time the doctor had specifically advised the claimant to leave her employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

- d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Code Section 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has satisfied the requirements of the rule. She has provided a medical opinion that she had adequate health reasons to justify termination. While technically she did not provide this information to the employer prior to quitting to provide the employer an opportunity to provide an accommodation, given that the doctor's advice was to leave the employment, there was no accommodation that the employer could have offered that would have met the doctor's recommendation short of ending the employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing, or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's March 2, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

ld/kjf