

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

CONSTANCE S FREDERICK
7827 ONTARIO ST
OMAHA NE 68124-4020

HARVEY'S IOWA MANAGEMENT CO INC
D/B/A HARRAHS
COUNCIL BLUFFS CASINO
#1 HARVEY'S BLVD
COUNCIL BLUFFS IA 51501

Appeal Number: 04A-UI-08306-RT
OC: 07-11-04 R: 01
Claimant: Respondent (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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Harvey's Iowa Management Company, Inc., doing business as Harrah's Council Bluffs Casino, filed two timely appeals from unemployment insurance decisions as follows: a decision dated July 28, 2004, reference 01, allowing unemployment insurance benefits to the claimant, William C. Frederick, which is appeal 04A-UI-08305-RT, and a decision dated July 28, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Constance S. Frederick, which is appeal 04A-UI-08306-RT. The administrative law judge consolidated the two appeals into one hearing without objection from the parties because the witnesses were the same, the issues were the same and the potential exhibits were the same. After due notice was issued, a consolidated telephone hearing was held on August 23,

2004 with both of the claimants participating. Deb Upton, Kathleen Moore, and Laura Allman were available to testify for the claimants but not called because their testimony would have been repetitive and unnecessary. Crystal McKeehan, Employee Relations Representative, participated in the hearing for the employer. Roy Bangart, Table Games Manager, was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of the Workforce Development records for both claimants.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The two claimants were employed by the employer as full-time dealers from January 1, 1996 until each claimant voluntarily quit effective June 17, 2004, which was their last day of work. The two claimants quit because their working schedule had been changed. The working schedule of both claimants had been from 9:30 a.m. or 10:00 a.m. to 6:00 p.m. for the prior three or four years. They worked Thursday through Monday and had Tuesdays and Wednesdays off. On June 13, 2004, the claimants learned that the new schedule assigned to them would be from 11:30 a.m. to 8:00 p.m. Wednesday through Sunday with Mondays and Tuesdays off. This was impossible for them to work. The claimant, William Frederick, had personal commitments, including taking care of his grandchildren, which prohibited him from working the new hours. The claimant, Constance Frederick, also had personal commitments prohibiting her from working because she attended support groups and saw a therapist for the previous death of her son. The schedules were changed by the employer to accommodate the employer's goals and ends. When the claimants learned of the change of schedule, they expressed concerns immediately to their supervisor, Roy Bangart, on June 13, 2004. Mr. Bangart told them that the new schedule could not be changed. Both claimants indicated to Mr. Bangart that if they were forced to work the new schedule, they would have to quit. Mr. Bangart said the schedule could not be changed and both claimants informed him at that time that they would be quitting. Mr. Bangart did provide the claimants potential additional options of starting at different times or having different days off but this was unacceptable. The options did not include the old hours and days off that they had had.

Pursuant to their claims for unemployment insurance benefits both filed effective July 11, 2004, the claimant, William C. Frederick, has received unemployment insurance benefits in the amount of \$1,932.00 as follows: \$322.00 per week for six weeks from benefit week ending July 17, 2004 to benefit week ending August 21, 2004 and the claimant, Constance S. Frederick, has received unemployment insurance benefits in the amount of \$1,860.00 as follows: \$310.00 per week for six weeks from benefit week ending July 17, 2004 to benefit week ending August 21, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the separation by the claimants from their employment was a disqualifying event. It was not.
2. Whether the claimants are overpaid unemployment insurance benefits. They are not.

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(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

All of the parties concede that the claimants voluntarily left their employment effective June 17, 2004 and the administrative law judge so concludes. The issue then becomes whether the claimants left their employment without good cause attributable to the employer. The administrative law judge concludes that the claimants have the burden to prove that they have left their employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimants have met their burden of proof to demonstrate by a preponderance of the evidence that they left their employment with the employer herein with good cause attributable to the employer. Both claimants credibly testified that they left their employment with the employer herein because of a change in their working schedules as set out in the findings of fact. The employer's witness, Crystal McKeehan, Employee Relations Representative, credibly testified that the claimant's schedule was changed as set out in the findings of fact. The evidence establishes that the two claimants had worked the old schedule for approximately three to four years either beginning at 9:30 a.m. or 10:00 a.m. and ending at 6:00 p.m. and having Tuesdays and Wednesdays off. Although they had worked until 8:00 p.m. working ten hour days earlier, they had not done so for three or four years. Both claimants expressed concerns immediately to their supervisor, Roy Bangart, on the day they learned of the new schedule, June 13, 2004, and Mr. Bangart told them that the schedules could not be changed back to their old schedules. Both claimants informed Mr. Bangart that if the new schedule was forced upon them, they would have to quit because they could not work the new schedule. Mr. Bangart told them that he could not change the schedule back to their old schedules. Mr. Bangart did provide additional options but not to return to the old schedules worked by the claimants. Both claimants had credible reasons for not being able to work the new schedule.

Under these circumstances, the administrative law judge is constrained to conclude that the employer willfully breached its contract of hire with both claimants as their contracts of hire had been amended when the employer changed the working hours and days off for the claimants. The administrative law judge further concludes that the change of contract as amended was substantial involving working hours, shifts, and days off. Both claimants expressed concerns to the employer and indicated that they would have to quit if the change was enforced and they were told that the change would be enforced and they quit. Accordingly, the administrative law

judge concludes that both claimants left their employment voluntarily with good cause attributable to the employer and, as a consequence, they are not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to each claimant, provided they are otherwise eligible.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant, William C. Frederick, has received unemployment insurance benefits in the amount of \$1,932.00 and claimant, Constance S. Frederick, has received unemployment insurance benefits in the amount of \$1,860.00 since both separated from the employer on or about June 17, 2004 and filed for benefits effective July 11, 2004. The administrative law judge further concludes that both claimants are entitled to these benefits and are not overpaid such benefits.

DECISION:

The representative's decision of July 28, 2004, reference 01, is affirmed. The claimant, Constance S. Frederick, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible because she left her employment voluntarily with good cause attributable to the employer. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

tjc/b