

**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 L WEST
3032 AVE F
COUNCIL BLUFFS IA 51501**

**HARVEYS BAR MANAGEMENT CO INC
DBA HARVEYS CASINO RESORTS
2701 – 23RD AVE
COUNCIL BLUFFS IA 51501**

**Appeal Number: 04A-UI-05564-RT
OC: 04-25-04 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 Bar Management Company, Inc., doing business as Harvey's Casino Resorts, filed a timely appeal from an unemployment insurance decision dated May 7, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Linda L. West. After due notice was issued, a telephone hearing was held on June 10, 2004 with the claimant participating. Tonya Meyer, Senior Employee Relations Representative, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. The administrative law judge twice tried to call the employer's witness at the number provided at 1:00 p.m. and 1:02 p.m. but the witness was not there. The administrative law judge received a

voice mail for the witness. The administrative law judge left a message that he was going to proceed with the hearing and that if the employer wanted to participate it needed to call before the hearing was over and the record was closed. The witness called at 1:05 p.m. and the administrative law judge called the employer's witness back at 1:06 p.m. and the witness participated in the entire hearing.

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 claimant was employed by the employer as a full-time housekeeper from October 15, 1997 until she voluntarily quit effective April 9, 2004. On or about March 26, 2004, the claimant submitted a two-week written notice to her supervisor, Claudia Hendrix, and also told the lead person, Able Montes. The claimant quit because the employer was changing the schedule of hours and days the claimant worked. Beginning in March 1998, the claimant worked days from 7:00 a.m. to 3:30 p.m. Wednesday through Sunday. Those hours changed slightly to 7:30 a.m. to 4:00 p.m. in February 2004. Based on these hours the claimant had made arrangements to pick up her granddaughter at 4:00 p.m. when she got off work and watch her granddaughter until her daughter got off work at 6:00 p.m. Further, the claimant performed babysitting duties on days when she was not working. The employer reorganized the hours of the employees in housekeeping because of business demands. The employer believed that the day shift was overstaffed and wanted a staggered start for employees. The claimant's hours were to change from 10:00 a.m. to 6:30 p.m. The claimant learned of these hours approximately March 12, 2004. She then expressed concerns about these hours to the manager of housekeeping, Lynn Spooner, and indicated to Ms. Spooner that those hours were not acceptable and she would have to quit if they were forced upon her. Ms. Spooner informed the claimant that her hours could not be changed. The claimant also expressed concerns about these matters to a lead person, Mr. Montes. There is a bid process selected for the hours but by the time the claimant was allowed to bid, the hours she had previously worked were not available. The claimant was given an option to work on call or possibly from 7:30 a.m. to 4:00 p.m., the hours she had worked, but with varying and different days off. This was unacceptable to the claimant as were the new hours from 10:00 a.m. to 6:30 p.m. for the reasons given above. The claimant then quit. Pursuant to her claim for unemployment insurance benefits filed effective April 25, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,332.00 as follows: \$222.00 per week for six weeks from benefit week ending May 1, 2004 to benefit week ending June 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. She is 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.

The parties concede that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant credibly testified that, after working for six years for the employer in the day shift from either 7:00 a.m. to 3:30 p.m. or from 7:30 a.m. to 4:00 p.m. Wednesday through Sunday with Mondays and Tuesdays off, her hours were going to change to 10:00 a.m. to 6:30 p.m. The employer was reorganizing and changing the hours because of business demands. The employer did hold this out to a bid process but by the time it came time for the claimant to bid on her hours no other hours were available. The claimant's new hours were unacceptable because she had been picking up her granddaughter at 4:00 p.m. and babysitting her until her daughter got off work at 6:00 p.m. and then also using her days off to babysit. The claimant was offered on-call hours but this was also not acceptable because she needed full-time work. Later, the claimant was offered the same hours she had been working but with varying days off and different days off. This was also unacceptable to the claimant for the above reasons and the claimant quit. Because of the claimant's long tenure with the employer at the same hours and days worked, the administrative law judge is constrained to conclude that the change in the claimant's hours and/or days worked was a willful breach of the claimant's contract of hire as amended which breach is substantial involving working hours and shifts. The claimant expressed concerns about these changes to the housekeeping manager, Lynn Spooner, and indicated to Ms. Spooner that if the changes were forced on her she would have to quit. Ms. Spooner said that the claimant's hours and days were going to have to change and the claimant quit.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer, and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant.

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 has received unemployment insurance benefits in the amount of \$1,332.00 since separating from the employer herein on or about April 9, 2004 and filing for such benefits effective April 25, 2004. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of May 7, 2004, reference 01, is affirmed. The claimant, Linda L. West, 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