

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**DEBORAH S BAXTER**

Claimant

and

**RECOVERY ROOM**

Employer

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**HEARING NUMBER: 16B-UI-14231**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-1**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Deborah S. Baxter, worked for Recovery Room from May 2, 2010 through October 22, 2015 as a full-time server/bartender. (24:00-25:03) The Recovery Room was a small bar/restaurant, which had an intimate, family-like atmosphere. (37:08-37:17) Ms. Stout, the owner, was oftentimes brusque when she reprimanded the employees, and sometimes reprimanded them in the presence of the regular patrons. (33:39-33:48) The Claimant never discussed her concerns with the Employer about her manner of speaking to her. (15:20-15:22; 37:04-37:29)

And the end of every shift, the Employer required employees to follow a specific procedure for cleaning mustard and ketchup lids and bottles to avoid cross contamination. (27:43-29:12; 34:56-35:15) On October 1, 2015, the Claimant did not follow the correct procedure; she pulled the lids out of the murky

water without rinsing them in hot water before drying them off and replacing the lids on the bottles. The Employer loudly questioned her in front of customers, which embarrassed the Claimant. Ms. Stout immediately apologized to all present. (21:33-22:40; 28:33-29:00; 29:31-29:42) The following day, the regular patrons teased Ms. Baxter about the prior day's incident, which the patrons had sometimes done to other employees who'd been reprimanded. (31:58)

The Claimant gave her two-week notice via text indicating that she was moving on to retirement. (7:00-7:24; 25:15-25:23; 26:03-26:25; 32:19-32:28; 36:23-36:45; 44:21-44:46; 45:37-45:50) The Claimant agreed to stay an additional week to help, as Ms. Stout had recently had knee surgery. (25:32-25:39) The Employer did not want the Claimant to leave, and acknowledged her 'moving on' with flowers and a card signed by other employees on her last day. (25:30-25:34; 26:42-26:53; 41:38-41:47) Ms. Baxter also indicated that she would be willing to come in to cover shifts, if needed. (26:54-27:00; 41:57-42:48)

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) (2013) provides:

An individual shall be disqualified for benefits: *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...

The claimant quit after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The Employer provided unrefuted testimony that the employment environment was an intimate one, and one in which the patrons, employees, and Employer had a somewhat relaxed demeanor towards each other. Although Ms. Stout admits that she was not always 'tactful' in her delivery of reprimands to her employees, both parties agree that Ms. Baxter never raised any concerns to the Employer.

As to the final incident that led to the separation, the Employer admits that her reprimand was abrupt, but it was largely out of concern for the health safety issue that the Claimant's behavior presented. While we don't condone reprimands in the presence of customers, it is clear from this record that the Employer's reaction was spontaneous for which she immediately apologized. There is no evidence to substantiate that

Ms. Baxter endured years of verbal abuse. The Claimant's testimony was largely vague and she was unable to cite repeated instances with any specificity. The only other instance involved an incident that occurred several months prior to her texted resignation. We would also question why the Claimant would stay on for any length of time; much less agree to return to cover other employees in the future given her allegations. For this reason, we cannot conclude that the Claimant was forced to work under detrimental or intolerable working conditions. Rather, the record supports that she quit after being reprimanded, and then teased about the matter, which was a disqualifying separation.

**DECISION:**

The administrative law judge's decision dated January 25, 2016 is **REVERSED**. The Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, the Claimant is denied until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g".

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Kim D. Schmett

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Ashley R. Koopmans

**DISSENTING OPINION OF JAMES M. STROHMAN:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the administrative law judge's decision in its entirety.

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James M. Strohman

AMG/fnv