IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DAMEION F WATKINS Claimant **R C CASINO LLC** Employer	**APPEAL 18A-UI-08169-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/24/18** **Claimant: Appellant (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 20, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 21, 2018. Claimant participated. Employer participated through Sara Pasha, Human Resources. Claimant's Exhibit A was admitted into the record.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a bartender, July 12, 2017 through June 29, 2018, when she voluntarily quit her job. The employer had continuing work available for the claimant that complied with her work restrictions, but the claimant chose to quit.

The claimant has a number of personal health issues including leg problems, plantar fasciitis, heart problems, high blood pressure, fibro dysplasia and ceratoid artery problems that interfered with her ability to work without accommodations from this employer.

The claimant was on medical leave from April 19 through May 19 and did not work at all. When she returned to work her doctor had provided work restrictions for her. Despite the fact that her medical problems were not the result of a work related illness or injury, the employer accommodated her work restrictions from her doctor.

The claimant had four work restrictions from her doctor including slower paced atmosphere, limited bending, smoke free environment and a matt to stand on while working on a concrete floor. The employer met with the claimant and moved her from a bartender job on the casino floor to a job in the Draft Day bar/restaurant. It was a restaurant outside the casino floor that would keep claimant from smoke environment.

The claimant was off work again from May 29 until June 6 for non-work related medical issues with her feet. When the claimant returned to work on June 6, she did not have any new work restrictions and returned to her job at the Draft Day restaurant. The claimant only had to ask her supervisor to put down the mats while she worked. Other employees would do lifting for her or obtain things that would require she walk through the casino area that was smoky. The employer rearranged the beer and liquor in her bar area to accommodate her lifting and bending restrictions.

On June 27, while walking to the human resources department the claimant caught her apron on something and fell. She was being evaluated by the employer when she decided she wanted to go to the emergency room. The claimant did not let the employer direct her to their workers compensation provider before she drove herself to the emergency room of her choice. The claimant has no lasting or permanent impairment due to the fall and did not obtain any new work restrictions due to the fall.

At no time was the claimant promised a raise. The employer told her they would look into her situation and determine if she was due a raise. The claimant quit before the employer could reach a decision. The claimant was paid the same hourly rate to bartend in the casino as she was to work in the Draft Day restaurant.

The claimant worked no more than twenty total days at the Draft Day restaurant before she decided to quit.

When other employees reported to the employer that a manager was taking tips, the employer investigated and when they caught him on camera he was discharged. The claimant did not raise the issue of the manager taking tips before she quit her job.

The employer met with the claimant multiple times to go over her requested accommodations. The employer accommodated all of the claimant's accommodations. While the claimant alleges that a third party who deals with their short term disability benefits told the claimant that the employer would not accommodate her restrictions, that is not credible in light of the fact that the employer does not allow the third party to even have access to what accommodations are requested. The employer also accommodated all of the claimant's work restrictions.

The claimant did not receive the decision that disqualified her from receipt of benefits until after the time to file an appeal had expired. She filed her appeal as soon as she obtained a copy of the decision from Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the

> claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs “a” through “h”. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within a few days of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:
>
> 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.

Iowa Admin. Code r. 871-24.25(21) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(27) 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:
>
> (27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The employer was not obligated to accommodate the claimant's work restrictions as they were due to a number of non-work related illnesses. The employer did accommodate all of the work restrictions they received from her doctor. Claimant was never promised a raise and when the employer was notified about the manager taking tips, they discharged him as soon as they had evidence he was stealing. The administrative law judge simply cannot find any good cause attributable to the employer for the claimant leaving the employment. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The July 20, 2018, (reference 02), decision is affirmed. The claimant's appeal is timely. The claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs