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

TINA M FAY-BERRY
3125 W 32ND ST
DUBUQUE IA 52001

PENINSULA GAMING COMPANY LLC
DIAMOND JO CASINO
PO BOX 1750
3RD ST & ICE HARBOR
DUBUQUE IA 52004-1750

Appeal Number: 04A-UI-12047-DT
OC: 10/17/04 R: 04
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 Leaving

STATEMENT OF THE CASE:

Peninsula Gaming Company, L.L.C. doing business as Diamond Jo Casino (employer) appealed a representative's November 2, 2004 decision (reference 01) that concluded Tina M. Fay-Berry (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 21, 2004. The claimant participated in the hearing. Troy Wright appeared on the employer's behalf and presented testimony from one other witness, Wendy Runde. 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:

The claimant started working for the employer on June 9, 1994. As of August 29, 1996, she worked full time as an employee bank cashier usually on a Monday through Thursday, 4:30 p.m. to 2:00 a.m. and Friday 5:00 p.m. to 3:00 a.m. schedule. Her last day of work was September 29, 2004.

On September 7, 2004, the claimant was informed that the employee bank operation was phasing back, and that she would have to drop from 40 hours to 32 hours per week. On September 17, the employer informed the claimant that employee bank operation would be eliminated, and its functions incorporated into the cage department. She was told that she would have the option of transferring into a cage cashier position at the same rate of pay, or into an accounting position with a cut in pay. The claimant understood that the accounting position was a closer pay match to one of the other employee bank cashiers whose position was also being eliminated, and so understood that the cage cashiering position was the most likely available position. The employer indicated that the employee bank operation would be closed as of October 30.

The claimant had worked as a cage cashier before becoming an employee bank cashier and did not like the hours of the cage cashiers. Further, she had had difficulties in working with the cage cashier staff. Most recently, on September 25, the cage cashier staff had incorrectly again informed the claimant that the cage did not have some moneybags that were designated for the employee bank area. When the claimant complained about the cage cashier staff's error, the department head, who would have become the claimant's supervisor, came to her and yelled at her about her complaint.

On September 29, when the claimant reported for work, she was directed to start transitioning to the cage cashier position. She became very upset. Ms. Runde, the controller, observed how upset the claimant was and persuaded her to go and speak to a higher supervisor. As a result of that discussion, the claimant agreed to take a couple days off and to meet and discuss the situation again on October 1. The meeting was held on October 1. Although the claimant had intended on resigning at that time, she agreed to wait until other options or available positions could be explored. On or about October 5, the higher supervisor contacted the claimant and informed her that other positions available included a cocktail waitress position, a deli position, and a part-time customer service club position. All of the positions would require a cut in pay. On October 6, the claimant delivered her uniform and other employee materials to the employer and left a message that none of the positions would work out.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for good cause attributable to the employer.

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.

"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). The change in the claimant's job duties and position which was to have been implemented was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's November 2, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/b