

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RITA LOWERY
Claimant

APPEAL NO. 10A-UI-07688-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALLEY INN LLC
Employer

OC: 04/25/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 19, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 28, 2010. The claimant participated. The employer participated by Waynetta Blaum and Curtis Blaum, owners. The record consists of the testimony of Rita Lowery; the testimony of Curtis Blaum; the testimony of Waynetta Blaum; Claimant's Exhibit A; and Employer's Exhibit 1.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a bar and grille. The bar is a neighborhood bar in Pleasant Valley, Iowa. The claimant had worked for the employer approximately one and one-half years prior to her quitting her job. Her duties included bartending, serving, and assisting with the cooking. Her hours were 10:45 a.m. to 6:00 p.m., Monday through Friday. She also had daytime hours on Saturday and Sunday.

The claimant worked on April 3, 2010, which was a Saturday. Her shift was supposed to end at 6:00 p.m., but another employee abruptly quit and the claimant ended up assisting at the bar until approximately 8:30 p.m. The claimant then stayed at the bar and began drinking. Her sister Jodi came in about 10:00 p.m. and also began drinking. A last call was made at 1:30 a.m. in accordance with the bar's liquor license. At approximately 1:45 a.m., Jodi asked for a shot of either brandy or schnapps. Curtis Blaum, who was present at the time, said no and, as a result, Jodi became very belligerent and began using profane language. The tirade continued and Jodi was asked to leave. She said she quit and was never coming back. Jodi was also an employee. The claimant then announced that she was not coming back either and that she quit. Both Jodi and the claimant then left the bar. The claimant was intoxicated at the time.

The claimant was scheduled to work on Monday but she did not come to work. The claimant did call Waynetta Blaum on Tuesday and asked for her job back. The employer declined to re-employ the claimant. Work was available had the claimant not elected to quit.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence established that it was the claimant who initiated the separation of employment in this case. On April 3, 2010, the claimant elected to stay at the bar after her shift ended and consumed enough alcohol that she became intoxicated. She testified that she was "burned out" by recent events at the bar, including the possibility that a long-time employee and friend might be terminated and some extra time she had put in making fresh hamburger patties as a new menu item. The claimant conceded that she did say she quit and that she was not coming back. The bar was closed on Sunday, which was Easter, and the claimant came to regret her decision. However, she did not phone the employer and ask for her job back until Tuesday. By then, the employer had decided to extend an offer to another individual to manage the bar and kitchen.

The employer reasonably assumed that the claimant had quit, especially when she did not come to work as scheduled on Monday and did not contact the employer until Tuesday. The claimant asked for her job back, an indication that the claimant knew she had quit. Although the claimant was intoxicated when she decided to quit, the claimant must take responsibility for her decision to drink and the statements she made that night. The claimant's words and her subsequent actions show that she intended to quit her job. The employer accepted her resignation and was not obligated to re-hire the claimant. Accordingly, the claimant voluntarily left her job without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated May 19, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw