

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

SHEILA M JAKES
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CARAWAY AR 72419-0363

AMERISTAR CASINO CO BLUFFS INC
c/o UNEMPLOYMENT SERVICES LLC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 06A-UI-07386-JTT
OC: 06/18/06 R: 12
Claimant: Appellant (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 Quit

STATEMENT OF THE CASE:

Sheila Jakes filed a timely appeal from the July 17, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 9, 2006. Ms. Jakes did not personally participate, but was represented by Jim Taylor. Sandy Fitch of Unemployment Services/TALX UC eXpress represented the employer and presented testimony through Human Resources Representative Shila Kinsley.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sheila Jakes was employed the Ameristar Casino Council Bluffs as a full-time kitchen steward from January 17, 2005 until April 14, 2006, when she quit to move back to Arkansas. Ms. Jakes had to move because her living arrangements changed and she could not afford her residence. Ms. Jakes called in absences for personal reasons on April 11, 12 and 13. Later on April 13, Ms. Jakes notified the

employer she would not be returning to the employment. The employer continued to have full-time work available to Ms. Jakes.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Jakes' voluntary quit was for good cause attributable to the employer. It does 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 24.25(2) 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:

(2) The claimant moved to a different locality.

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 in the record indicates that Ms. Jakes quit the employment for compelling personal reasons and to move to a different locality, but did not quit for good cause attributable to the employer. Accordingly, Ms. Jakes is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agency representative's July 17, 2006, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

jt/kjw