

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHELLY L STACY

Claimant

APPEAL NO. 14A-UI-11318-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATFISH BEND CASINOS II LLC

Employer

OC: 10/05/14

Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 23, 2014, reference 02, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 20, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Morley participated in the hearing on behalf of the employer with a witness, Linda Danforth.

ISSUES:

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

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked part time for the employer as a server and bar back from March 22, 2014 to July 8, 2014. The claimant resigned from her job with notice to the employer because she needed back surgery. She was not eligible for leave under the Family and Medical Leave Act (FMLA) and knew that she would be discharged due to absenteeism.

After she was released to work by her doctor for regular work in September 2014, she contacted the employer about returning to work. She was informed that the claimant's supervisor had decided she was not eligible for rehire due to issues with tardiness. Her regular work or comparable suitable work was not available for the claimant.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

The unemployment insurance law provides that individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The claimant has met all the requirements of Iowa Code § 96.5-1-d. While the employer may have had compelling business reasons for not rehiring the claimant, the law does not provide an exception for failing to rehire a claimant under Iowa Code § 96.5-1-d for cases where the work is not available due to prior attendance issues.

The last issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The evidence establishes the claimant was released to return to her regular job by her doctor in September 2014, before the claimant applied for unemployment insurance benefits. She was able to and available for work.

The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer is chargeable for its proportional share of benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated October 23, 2014, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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