

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDEE L CHALUPA

Claimant

APPEAL NO. 12A-UI-06632-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BLUE RIBBON HOLDINGS LLC

Employer

OC: 04/29/12

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 30, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on June 28, 2012. The claimant participated. The employer participated by Ms. Robin Moore, hearing representative, and witness Mr. Joseph Vandeventer, general manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Wendee Chalupa was employed by American Blue Ribbon Holdings LLC, doing business as Village Inn, most recently from November 2010 until May 9, 2012. Ms. Chalupa was employed as a part-time server and was paid by the hour. Her immediate supervisor was the general manager, Mr. Vandeventer.

Ms. Chalupa failed to return for the second half of her split shift on August 18, 2012, because the claimant had been arrested and incarcerated. A family member contacted the general manager, and the general manager initially agreed to keep the claimant's job position open for her. Subsequently, Ms. Chalupa was released from incarceration and entered a rehabilitation program. Both the claimant's family members and the claimant had spoken with Mr. Vandeventer, and the employer had agreed to keep Ms. Chalupa's job position open for her, pending her return from rehabilitation. On or about May 2, Ms. Chalupa spoke directly with Mr. Vandeventer. During that conversation, Mr. Vandeventer indicated that he was trying to hold the claimant's job position open for her as long as he could. The parties at that time talked about different work shifts to accommodate issues that Ms. Chalupa might be having with other employees who the claimant considered to be "not sober." On May 9, 2012, Ms. Chalupa initiated a telephone conversation with Mr. Vandeventer and at that time stated that her parole officer had told the claimant that it was not in her best interests for her to return back to employment with Village Inn, because other employees might, in effect, impede her recovery.

At that juncture, the employer reasonably concluded that Ms. Chalupa was abandoning her job position and the employer no longer attempted to keep a job position open for the claimant.

On or after May 9, 2012, a company customer and friend of the claimant inquired about Ms. Chalupa's status. At that time, Mr. Vandeventer stated that the claimant had eligibility to be "rehired."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is, first, whether the evidence in the record establishes that the claimant voluntarily quit employment. It does.

The issue then is whether the claimant left employment with good cause attributable to the employer. She did 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2.

In this matter, the evidence establishes that Ms. Chalupa was unexpectedly arrested on March 18, 2012. A family member provided notice to the employer that the claimant would not be reporting for the second portion of her shift and the reason. During initial conversations with the claimant and family members, Mr. Vandeventer, the facility's general manager, agreed to hold the claimant's job position open for her, pending her release from jail and, subsequently, her release from rehabilitation. On May 2, Ms. Chalupa had a telephone conversation with Mr. Vandeventer and at that time stipulated that there might be an issue with her return to work because of the claimant's perception that other employees on her work shift were "not sober" and may impede the claimant's recovery. The parties at that time talked about the claimant working different work shifts. The employer was again willing to work with Ms. Chalupa.

On May 9, 2012, however, Ms. Chalupa initiated another conversation by phone with the general manager and at that time stated she had been informed by her parole officer that it was not in the claimant's best interests to return to work because of the "extracurricular" activities of other workers at Village Inn. Based upon the claimant's statements on that date and her previous statements on May 2, the general manager was reasonable in concluding that Ms. Chalupa did not intend to return to work, and the employer filled the claimant's job position. Upon being released from rehabilitation, the claimant was informed that all working hours had been covered.

The administrative law judge, having considered the matter at length, concludes, based upon the evidence in the record, that the claimant's statements to her employer on May 2, and May 9, 2012, caused the employer to reasonably conclude the claimant was relinquishing her position with the company. The claimant's reasons for leaving were not attributable to the employer. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 30, 2012, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are 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.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw