

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CLYDE W MITCHELL**  
Claimant

**APPEAL 21A-UI-11567-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATFISH BEN CASINOS II LLC**  
Employer

**OC: 03/14/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Clyde W Mitchell, the claimant/appellant, filed an appeal from the April 28, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 13, 2021. Mr. Mitchell participated and testified. The employer participated through Steve Morley and David Guzman. Official notice was taken of the administrative record.

**ISSUES:**

Did Mr. Mitchell voluntarily quit without good cause attributable to the employer?  
Is Mr. Mitchell able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mitchell began working for the employer on June 11, 2007. He worked as a full-time dealer. Mr. Mitchell's job ended on June 8, 2020.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. On March 17, 2020, the employer closed due to the pandemic. The employer paid employees their full wages from March 17, 2020 through April 13, 2020.

On May 21, the employer held a mandatory employee meeting. Mr. Mitchell attended the meeting. The employer told employees that the casino would reopen on June 1. The employer also told employees about the COVID-19 safety protocols – each employee would be required to wear a face mask and a face shield while at work and would be required to have their temperature checked when they arrived at work. The employer would also be requiring customers to have their temperatures checked for the first three weeks.

Mr. Mitchell attended work on June 3 and June 4. Both days he wore a face mask. Mr. Mitchell has underlying health conditions and he found that wearing a mask made it difficult for him to

breath. Mr. Mitchell did not tell the employer this information. Both days, the employer sent Mr. Mitchell home early due to slow business. Mr. Mitchell called in on June 5 and June 6. Mr. Mitchell's wife has underlying health conditions that make her a high risk for complication if she tested positive for COVID-19. Mr. Mitchell was concerned about his own health if he tested positive for COVID-19 and he was concerned about exposing his wife to COVID-19 and her health. Mr. Mitchell discussed his job situation with his family and decided to quit to protect his and his wife's health. On June 8, Mr. Mitchell called Mr. Morley and told him that he quit. At that time, Mr. Mitchell told the employer about his concern for his health, his wife's health and the issue he had wearing a face mask.

Mr. Mitchell continued to be concerned about his and his wife's health after he quit. On August 14, Mr. Mitchell tested positive for COVID-19. He was in the hospital for about seven weeks, or until early October 2020. Mr. Mitchell was in recovery and limited in what he could do for about two months, or until about the end of November 2020.

In about January 2021, Mr. Guzman contacted Mr. Mitchell to ask him about working for the employer again. Mr. Mitchell told Mr. Guzman that he could not return to work yet. In late May/early June, Mr. Guzman again contacted Mr. Mitchell to ask him about working for the employer again. Mr. Mitchell again told Mr. Guzman that he could not return to work yet.

Mr. Mitchell continues to experience lingering COVID-19 symptoms and as a result he uses oxygen at night to help him breath. As of the hearing date, Mr. Mitchell is able to work in jobs where he can sit and where he is not required to wear a face mask.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Mitchell's separation from employment was without good cause attributable to the employer and he is not able to and available for work from June 8, 2020 through July 10, 2021.

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.

Iowa Admin. Code r. 871-24.25 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:

- (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the

employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of

establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) and (2) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.
- (2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Mr. Mitchell quit because of his concerns about his health, and his wife's health. Mr. Mitchell's concerns are understandable. However, his quitting was not for a good-cause reason attributable to the employer according to Iowa law.

From June 8, 2020 through July 10, 2021, Mr. Mitchell was either in the hospital or recovering from COVID-19 and not able to or available for work. As of July 11, 2021, Mr. Mitchell is able to work, as long as he can sit and he does not have to wear a face mask.

Benefits are denied effective June 8, 2021 because Mr. Mitchell voluntarily quit without good cause attributable to the employer and benefits are denied from June 8, 2020 through July 10, 2021 when Mr. Mitchell was not able to and available for work.

**DECISION:**

The April 28, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Mitchell voluntarily left his employment without good cause attributable to the employer and he is not able to and available for work from June 8, 2020 through July 10, 2021. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Daniel Zeno  
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July 26, 2021  
Decision Dated and Mailed

dz/mh