

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

KERRI J LYNN
3399 KIMBERLY DR
DUBUQUE IA 52002-2818

DUBUQUE RACING ASSOCIATION LTD
PO BOX 3190
DUBUQUE IA 52001

STEVE KRUMPE
PO BOX 599
DUBUQUE IA 52004-0599

Appeal Number: 05A-UI-06737-HT
OC: 05/29/05 R: 04
Claimant: Respondent (4)

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) – Quit
Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available
Section 96.3(7) – Overpaid

STATEMENT OF THE CASE:

The employer, Dubuque Racing Association Ltd. (DRA), filed an appeal from a decision dated June 24, 2005, reference 02. The decision allowed benefits to the claimant, Kerri Lynn. After due notice was issued a hearing was held by telephone conference call on July 26, 2005. The claimant participated on her own behalf. The employer participated by Human Resources Director Mary Hentges, Director of Maintenance Bob Kaesbauer, Health Physicist Gordon Axt and was represented by Attorney Steven Krumpe. Exhibits One, Two, Three, Four, Five, Six and A were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kerri Lynn began employment with DRA on November 13, 1995. She was a part-time slot supervisor working ten hours per week.

In early 2004 the claimant had a defibrillator implanted, which meant she was not able to work in areas with strong electromagnetic fields. The employer voluntarily arranged the claimant's work duties and location so she would not come into contact with the transformers in the casino because electromagnetic fields were being generated by them, which could cause interference with the defibrillator.

On April 25, 2005, the claimant was advised she was not to go by the Players Club or into the new area of the casino because large transformers had been installed in those areas and the employer was not sure if it was safe. On May 4, 2005, Ms. Lynn brought in some documentation from Medtronic, the manufacturer of the defibrillator, specifying the safe parameters.

Human Resources Director Mary Hentges sent a letter to the claimant on May 17, 2005, attaching information from the electrical contractor regarding the transformers, along with a diagram of the casino showing their locations. She was asked to have her doctor, Medtronic or any other individual providing her with care to review this information and then inform the employer of the status. The claimant wrote back on May 20, 2005, providing a telephone number for Medtronic for the employer to consult.

The claimant was advised by human resources on May 21, 2005, not to return to work until the matter of her safety could be determined. Another letter was sent on May 27, 2005, reiterating the request for information from her health care provider regarding her work restrictions and sending along a release of medical information form. On June 19, 2005, the claimant wrote back and stated she would not sign the release and again provided the telephone number for Medtronic. Ms. Lynn had declined to sign the medical release form on the advice of someone at the Civil Rights Commission.

The employer was concerned about doing a thorough and correct analysis of the electromagnetic fields within the casino for the safety of the claimant. The manufacturer does not do the tests but would make a device available for the employer to do so on its own. Due to a lack of knowledge and experience in such matters the maintenance department declined to perform the tests. Even with the tests it was not altogether clear whether there might be other restrictions involved in the claimant's activities. The employer contacted its consultant in regard to health accommodations for employees which also required information directly from the claimant's physician.

Another letter was mailed to the claimant on June 28, 2005, explaining all of these concerns and again requesting a medical release form. This time the claimant was advised by the Civil Rights Commission to sign the release which she did and it was received by the employer on July 7, 2005.

The employer immediately arranged for a survey to be done by a qualified health physicist and measurements were taken by Gordon Axt on July 21, 2005. A report was submitted on July 25, 2005, finding all of the electromagnetic fields to be well below the limits set by Medtronic. A

copy has been sent to the claimant along with a request that her doctor review it and certify her as being able to return to work. When this is done the claimant will be returned to her duties.

Kerri Lynn has received unemployment benefits since filing a claim with an effective date of May 29, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

There has been no separation from employment. The claimant is on a leave of absence due to health concerns. Disqualification may not be imposed.

The next issue is whether the claimant is eligible for benefits.

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".

The claimant was sent home from work on May 21, 2005, by the employer. This was an involuntary period of unemployment because she did not request to take a leave from her duties. However, this period of unemployment was prolonged for a period of two weeks by the claimant's refusal to cooperate with the employer in its attempts to test the work place for her

benefit. She cannot be considered to have been involuntarily on a leave of absence at that time since her lack of cooperation prolonged the period.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 24, 2005, reference 02, is modified in favor of the appellant. Kerri Lynn is qualified for benefits as there as been no separation from employment.

The claimant is eligible for benefits for the period between May 29 and June 18, 2005. She is ineligible for the period from June 19 through July 2, 2005. From July 3, 2005 onward she is once more eligible for benefits. She is overpaid in the amount of \$188.00.

bgh/kjf