

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

TONI E KLEMZ
611 JONES RD APT 19
EVANS DALE IA 50707

CASEYS 218 PUB
4014 UNIVERSITY AVE
WATERLOO IA 50701

Appeal Number: 04A-UI-06542-AT
OC: 05-16-04 R: 03
Claimant: Respondent (2)

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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's 218 Pub filed a timely appeal from an unemployment insurance decision dated June 2, 2004, reference 01, which allowed benefits to Toni E. Klemz. After due notice was issued, a telephone hearing was held July 1, 2004 with Owner Tim Casey participating and presenting additional testimony by Bartenders Becky Gardner and Jeremy Ades. Ms. Klemz did not respond to the hearing notice by providing a telephone number at which she could be contacted.

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: Toni E. Klemz worked as a part-time bartender for Casey's 218 Pub from late August 2003 until late January 2004. Ms. Klemz stopped reporting to work. After missing two successive Saturday shifts without contact, Owner Tim Casey stopped putting Ms. Klemz on the schedule.

In late 2003 Ms. Klemz had complained to Mr. Casey of a horseplay incident which occurred in the bar after hours. A bartender who no longer works for the company flicked his cigarette lighter at the hem of jogging pants being worn by a friend of Ms. Klemz. When Mr. Casey learned of the incident, he took action to make certain that it was not repeated.

Mr. Casey also learned from his staff that Ms. Klemz had claimed to have contacted the Waterloo Police Department concerning alleged sexual harassment at work. Mr. Casey contacted the Waterloo Police Department at the time and again shortly before the present hearing. Officer Thomas Sullivan of the Waterloo Police Department advised Mr. Casey that the department had found no credible evidence in support of Ms. Klemz' assertions.

Ms. Klemz has received unemployment insurance benefits in the gross amount of \$53.00 since filing a claim effective May 16, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Klemz resigned with 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.

The evidence in the record establishes that Ms. Klemz abandoned her work by failing to report or to contact the employer. The evidence does not support her assertions that the employer engaged in or condoned behavior which would constitute intolerable or detrimental working conditions. Benefits are withheld.

Ms. Klemz has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code Section 96.3-7.

DECISION:

The unemployment insurance decision dated June 2, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$53.00.

tjc/b