

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET K TOWEY

Claimant

APPEAL NO. 12A-UI-03884-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK & CASINO**

Employer

OC: 02-05-12

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 2, 2012, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on May 8, 2012 in Des Moines, Iowa. The claimant did participate along with her son, Michael Towey. The employer did participate through Gina Vitiritto, employee benefits manager. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit 1 was entered and received into the record. After due notice was again issued, additional testimony was taken on June 25, 2012, via a telephone hearing, regarding the additional exhibits submitted and received into the record. Employer's Exhibit 2 was entered and received into the record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a casino floor attendant full-time beginning January 17, 2005 through February 6, 2012, when she voluntarily quit. The claimant was granted time off under the employer's family medical leave (FMLA) due to ongoing issues with her blood pressure. The claimant was expected to follow her doctor's instructions and limitations as to when she was able to and when she was not able to work. The employer's records establish that the claimant worked during a period when her physician had excused her from work. The claimant's memory that she did not recall working is not persuasive in light of the employer's extensive records showing that the claimant was paid for those days, but also signed out for her 'bank,' indicating she was working during the time period when she was to be off work.

The claimant's treating physician took her off work from January 3, 2012 through February 8, 2012. The employer's records show that the claimant actually worked on January 7, 8, 9, and 10. The claimant worked during a time period when her physician had certified to the employer that she was not physically capable of working. The employer asked the claimant to provide specific information from her physician about why she was working when her doctor had taken her off work. At hearing, the claimant could offer no explanation about why she was working when she was to be off work per her doctor's orders, other than she did not believe she was working. It's not unreasonable for an employer to ask an employee to explain such a discrepancy. The employer would not let the claimant return to work until she explained why she was working during a period when her physician said she should be off work. To date, the claimant has not returned to the employer to offer an explanation as to why she worked during the period when her physician said she was incapable of working. An employer has a right to insure that their FMLA leave policy is not abused or violated. The claimant is not considered discharged by the employer and will be put back to work if she provides information to explain why she was working during a time period when she had her doctor indicate she was not physically able to work under FMLA. The evidence does establish that the claimant did work on January 7, 8, 9 and 10.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 been told more than once by both Ms. Vitiritto and Dan Byers that she needed to bring in or submit information from her physician explaining why she was working during a time period when her physician certified to the employer that she was not physically capable of working under their FMLA policy. It is not unreasonable for the employer to ask an employee for such an explanation when these circumstance arise. The clear records establish that the claimant did work for four days in January 2012 when she was to be on FMLA. She need only provide an explanation from her physician as to why she did so in order to be put back to work. The only reason the claimant is not working is because she has not provided the required explanation. Only the claimant can obtain such information from her physician, due to privacy regulations. Under these circumstances, the claimant's failure to work is most properly characterized as a voluntary quit. While claimant's decision not to provide the information requested by the employer may have been for good personal reasons, it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The April 2, 2012 (reference 01) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw