

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

PATRICIA L WERNER
1763 – 130TH AVE
MURRAY IA 50174

SOUTHERN IOWA GAMING COMPANY
LAKESIDE CASINO & RESORT
PO BOX 424
OSCEOLA IA 50213

Appeal Number: 04A-UI-01818-BT
OC: 01/18/04 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 – Overpayment

STATEMENT OF THE CASE:

Lakeside Casino & Resort (employer) appealed an unemployment insurance decision dated February 19, 2004, reference 01, which held that Patricia Werner (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2004. The claimant participated in the hearing. The employer participated through Mary Ann Towsley, Human Resources Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time accounting clerk on July 24, 2000 but was working full-time when she voluntarily quit on January 15, 2003. During the claimant's evaluation in December 2002, the employer advised her she needed some additional training as her accounting skills were not where they needed to be. The employer wanted the claimant to obtain additional education. There was going to be some reorganization within the company and the employer informed the claimant that without any additional training, her job would no longer exist as she knew it. The claimant did not know if she wanted to do that since her parents were ailing and she was providing care for them. Her job was not being eliminated and the employer offered the claimant some job alternatives if she was not able to take the time needed for her current job. The claimant voluntarily quit her employment on January 14, 2003 as she determined she had prior commitments with her family that needed to be addressed before anything else.

The claimant filed a claim for unemployment insurance benefits effective January 18, 2004 and has received benefits after the separation from employment in the amount of \$1,636.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

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 demonstrated her intent to quit and acted to carry it out when she voluntarily quit her employment as of January 14, 2003. Her job was not being eliminated. She was told she needed additional skill training and that if she failed to obtain that, her job would not exist as she knew it. The employer has a responsibility to ensure its employees are properly doing the jobs to which they are assigned and to vary their duties if that cannot be done. The employer did not fire the claimant or suggest the claimant quit her employment. The employer even offered her other alternatives that might work better at the particular time due to the claimant's pressing family needs. Ultimately, the claimant decided she needed to take care of her prior family commitment. The law presumes it is a quit without good cause attributable to the employer when an employee leaves due to family responsibilities or serious family needs. 871 IAC 24.25(23). The claimant has failed to establish her separation was with good cause attributable to the employer. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated February 19, 2004, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,636.00.

sdb/b