

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

CHARLES GRANT
PO BOX 54
1002 N CROW
HARDEN MT 59034-0054

AMERISTAR CASINO
COUNCIL BLUFFS INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-05573-RT
OC: 04-18-04 R: 12
Claimant: Respondent (1)

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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Ameristar Casino Council Bluffs, Inc., filed a timely appeal from an unemployment insurance decision dated May 7, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Charles Grant. After due notice was issued, a telephone hearing was held on June 10, 2004 with the claimant participating. Denver Meyer, Team Relations Manager, participated in the hearing for the employer. The employer was represented by Lucie Hengen of Employers Unity, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a full-time steward from April 17, 2002 until he voluntarily quit on January 2, 2004. The claimant's last day of work was January 1, 2004. Thereafter the claimant never returned to work and never notified the employer that he was not coming to work. The claimant quit because of the alleged improper treatment by a supervisor, Sue Trumble, when the claimant notified her at approximately 11:30 a.m. on Christmas day, December 25, 2003, that he would not be at work as scheduled at 3:00 p.m. The claimant's brother-in-law who had been to Iraq was visiting that day and the claimant wanted to take off and did so. Ms. Trumble was not pleased that the claimant was taking the day off with such short notice and told him that he needed to be at work. She did not use any profanity but the claimant took offense and left and did not work on that day. The claimant then worked on December 28, December 29, December 30, and December 31, 2003 and January 1, 2004. The claimant was not discharged for missing work on December 25, 2003. On or about January 12, 2004, the claimant called and spoke to the employer's witness, Denver Meyer, Team Relations Manager. The claimant asked if he could be rehired. Mr. Meyer informed the claimant that he would have to send a letter in requesting that and the claimant did so in a letter received by Mr. Meyer on January 19, 2004. The claimant's letter was the first time that the claimant indicated His displeasure with Ms. Trumble and gave that as a reason for his quit. The claimant also testified that Ms. Trumble was frequently critical of his work by "getting on his case" but the claimant gave no specifics. The claimant expressed some concerns to other supervisors but never indicated or announced an intention to quit if his concerns were not addressed. Pursuant to his claim for unemployment insurance benefits filed effective April 18, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,212.00 as follows: \$202.00 per week for six weeks from benefit week ending April 24, 2004 to benefit week ending May 29, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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.

871 IAC 24.25(6), (21), (22), (28) 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.

- (6) The claimant left as a result of an inability to work with other employees.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.

The parties concede that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant testified that he left his employment because of his treatment by a supervisor, Sue Trumble, when he told Ms. Trumble at 11:30 a.m. on Christmas day, December 25, 2003, that he would not be at work at 3:00 p.m. The claimant stated that Ms. Trumble "cussed him out." However, the claimant conceded that Ms. Trumble did not use any profanity but merely told the claimant that he needed to be at work. This is understandable inasmuch as the claimant was scheduled on Christmas day and waited until 11:30 a.m. to inform the employer that he was not going to be at work. The reason the claimant did not want to be at work was because his brother-in-law was back from Iraq and he wanted to spend time with him. The claimant equivocated about how long his brother-in-law was going to be in Nebraska and able to visit with the claimant. The claimant also testified that he quit because his wife got upset but his wife was not present when Ms. Trumble made the comments to the claimant but only heard about the comments from the claimant and then became upset. The administrative law judge does not understand what the claimant's wife has to do with his quit. The claimant also testified that Ms. Trumble "got on his case" but failed to specify specific examples. It appears to the administrative law judge that Ms. Trumble was occasionally critical of the claimant and the claimant took offense. The claimant did work on December 28, December 29, December 30, and December 31, 2003 and January 1, 2004 so he was not discharged as a result of his failure to work on December 25, 2003. The claimant then just quit showing up for work thereafter and has never returned to work. The claimant testified that he quit in a letter but the claimant's testimony was equivocal and uncertain and the employer's witness, Denver Meyer, Team Relations Manager, credibly testified that the claimant called him on January 12, 2004 and then at his suggestion sent a letter that Mr. Meyer received on January 19, 2004 about being rehired not quitting.

On the evidence here, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that claimant's working conditions were unsafe, unlawful, intolerable or detrimental as a result of the actions of Ms. Trumble nor is there a preponderance of the evidence that the claimant was subjected to any substantial change in his contract of hire. Rather, it appears to the administrative law judge that the claimant quit because of an inability to work with other employees and because he had a personality conflict with a supervisor and because he was reprimanded for being absent but none of these are good cause attributable to the employer. There is also some indication the claimant was dissatisfied with at least some portions of his work environment but this also is not good cause attributable to the

employer. If the claimant's working conditions were so intolerable or detrimental, the administrative law judge cannot understand why the claimant would, a couple of weeks later, ask to be rehired. There was some evidence that the claimant did express some concerns to other supervisors but even the claimant conceded he never indicated or announced an intention to quit if any of his concerns were not addressed by the employer or the supervisors. Mr. Meyer testified credibly that the first he heard of the claimant's problem with Ms. Trumble was in the letter which he received on January 19, 2004.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,212.00 since separating from the employer herein on or about January 2, 2004 and filing for such benefits effective April 18, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 7, 2004, reference 01, is reversed. The claimant, Charles Grant, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. He has been overpaid unemployment insurance benefits in the amount of \$1,212.00.

tjc/b