

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEIGH M NESS

Claimant

APPEAL NO. 11A-UI-08083-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT

Employer

OC: 05/08/11

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Riverside Casino and Golf Resort (employer) appealed a representative's June 10, 2011 decision (reference 01) that concluded Ashleigh Ness (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 14, 2011. The claimant did not provide a telephone number for the hearing and, therefore, did not participate in the hearing. The employer participated by Dan Kraus, beverage department manager; Kevin Koob, beverage supervisor; and Jodi Covington, human resources recruiter. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 19, 2010, as a full-time cocktail server. The claimant signed for receipt of the employer's handbook on April 19, 2010. On May 3, 2011, the claimant suffered a work-related ankle injury. She saw the company physician on May 3, 2011. The physician returned the claimant to work, with restrictions, and scheduled another appointment for the claimant on May 9, 2011.

The claimant returned to work on May 6, 2011, and the employer complied with the claimant's restrictions. On May 7, 2011, the claimant called the employer and properly reported her absence due to ankle pain. The employer indicated where the claimant could seek treatment, if necessary, and that she should properly report any further absences.

The claimant did not appear for work or notify the employer of her absence on May 8, 2011. On May 9, 2011, the claimant attended her medical appointment prior to the start of her shift. The physician returned the claimant to work that same day with restrictions. The claimant did not appear for work on May 9 or 10, 2011, or notify the employer of her absence. On May 10, 2011,

after the start of her shift, the employer notified the claimant that she was considered to have quit for failure to notify the employer of her absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work 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.

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's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing for work and stopped notifying the employer of her absences. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's June 10, 2011 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw