

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RICK E ARFMANN**  
Claimant

**APPEAL 17A-UI-06605-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEYS BR MANAGEMENT CO INC**  
Employer

**OC: 05/28/17  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 19, 2017 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 18, 2017. The claimant, Rick E. Arfmann, participated personally along with witness Kristine Kuennen. The employer, Harveys Br Management Co Inc., was represented by Alyce Smolsky, and participated through witnesses Salia Nazarie and Aaron King. Employer's Exhibit 1 was admitted.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a bartender in the employer's casino. He began working for this employer on June 6, 2016 and his employment ended on May 28, 2017, when he voluntarily quit by tendering his verbal and written resignation. See Exhibit 1. His job duties included assisting customers and serving drinks at the bar. His immediate supervisor was Marsha Miller. He typically worked Fridays, Saturdays, Sundays and Wednesdays each week.

Claimant voluntarily quit his employment for three reasons. First, claimant did not like the smoking environment he was required to work in. The bar is located in a casino that allows patrons to smoke cigarettes and cigars. Claimant was aware of this when he first became employed as a bartender. Claimant believed that the second-hand smoke caused him headaches and bronchitis. Claimant never notified the employer that his physician had advised him to voluntarily quit due to health concerns with second-hand smoke. Claimant never sought accommodation requests from the human resources department, as was required by the employer's written policy. Claimant never returned to this employer to offer his services after the separation from employment.

The second reason claimant voluntarily quit was because he was scheduled to work additional shifts other than on Friday, Saturday, Sunday and Wednesday. The claimant was aware when he was hired that he would be asked to work additional shifts as a part-time employee. The employer has a scheduling process in place wherein the claimant was asked to submit a notification of days that he was unavailable to work approximately thirty days prior so that he would not put on the schedule for days he was unavailable. Claimant did complete this process but became upset when he would be scheduled to work for a day that he did not previously indicate that he was unavailable. The employer assumed that claimant was available to work if he had not previously stated he was unavailable.

The third reason claimant voluntarily quit was due to his dissatisfaction working with a co-worker named Matt Jareske. Mr. Jareske was a bar back whose work duties included stocking the bar for claimant. Claimant became upset when he asked Mr. Jareske for help tending bar and Mr. Jareske laughed at him. Claimant also became upset when he was working a very hectic shift and he pulled a bottle of beer from the case that Mr. Jareske was stocking and Mr. Jareske stated to him "please don't take that bottle" from the area he was stocking. Claimant reported Mr. Jareske's behavior to his supervisor, who asked if claimant wanted to file a complaint for human resources to review. Claimant declined to file a formal complaint for investigation with human resources. Mr. Jareske never used profanity at claimant or made any threats to claimant.

Claimant had received previous written discipline for both attendance and a variance in cash during his shift. However, he was not going to be laid off or discharged from employment. There was continuing work available to claimant had he not quit.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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 quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant clearly voluntarily quit when he tendered his verbal and written resignation on May 28, 2017.

Because claimant voluntarily quit, he has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The first reason claimant voluntarily quit was because he believed he was suffering from health-related issues due to inhalation of second-hand smoke. He was aware of the smoking environment when he was first hired, so this was clearly not a change in his contract of hire.

A notice of intent to quit for reasons other than work-related health problems is not required. *Hy-Vee, Inc.*, 710 N.W.2d 1 (Iowa 2005). In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). Iowa Code § 216.6 requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that

the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant has the burden of proof to establish that the injury, illness or aggravation is work-related. *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976). Claimant provided no credible medical documentation from his physician to his employer or at the hearing that would establish that his illness regarding headaches or bronchitis was work-related. Further, claimant did not present any competent evidence showing adequate health reasons to justify his quitting. As such, no notice of intent that he was going to quit was provided to the employer and the separation was without good cause attributable to the employer.

The second reason claimant voluntarily quit was because he was scheduled to work additional shifts. The claimant could have limited his availability for additional shifts by turning in his availability form thirty days in advance, but he chose not to limit his availability in order to attend to other personal matters. Claimant was informed at the beginning of his employment that as a part-time employee he would receive additional shifts. This is not a change in the contract of hire or an intolerable working condition. Claimant has failed to establish this as a good-cause reason for the voluntary quit.

The third reason claimant voluntarily quit was because he determined he could no longer work with Mr. Jareske. There was no profanity used towards claimant or threats of violence to claimant by Mr. Jareske. Claimant refused to file a complaint regarding Mr. Jareske with the human resources department for investigation. Claimant's inability to work with Mr. Jareske is not a good-cause reason for leaving his employment.

Iowa Admin. Code r. 871-24.25(6) 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 § 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 § 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.

The claimant's voluntary quitting was not for any good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

The June 19, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Claimant is denied benefits until such time as he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs