IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

FRANK R PANEK
Claimant

RIVERSIDE CASINO & GOLF RESORT LLC
Employer

APPEAL NO. 08A-UI-02040-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/20/08 R: 03
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Riverside Casino & Golf Resort, L.L.C. (employer) appealed a representative's February 21, 2008 decision (reference 01) that concluded Frank R. Panek (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2008. The claimant participated in the hearing. Kris Bridges appeared on the employer's behalf and presented testimony from one other witness, Tara Schuster. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 15, 2006. He worked full time as a dealer in the employer's casino on the overnight shift from Thursday through Monday. His last day of work was on or about August 2, 2007. The employer considered the claimant to have voluntarily quit by job abandonment on August 6 when he had been a no-call/no-show for his scheduled shifts on August 3, August 4, and August 5.

In fact, the claimant had decided not to return to his employment. During the claimant's last shift the claimant had been on-duty with a pit manager who reprimanded him by telling him he could not do something the way he was doing it in running the craps table. A few weeks earlier the same pit manager had tested the claimant's vigilance over the money box by removing it from the table while the claimant was looking away and then reprimanded the claimant indicating that he should not have been able to take the money box like that unchallenged. The claimant felt the pit manager had unnecessarily embarrassed him in front of customers.

The claimant's average hours in the months of June and July had dropped from an average of about 31 to 33 hours per week to an average of about 25 per week; however, there were at

least 15 to 20 times that the claimant had left early from the shift. There was no time that the claimant was given no option but to leave early, and the claimant acknowledged that there were a significant number of occasions during June and July that he had volunteered to leave early, because he disliked working while that particular pit manager was on duty. The pit managers were on a three-month schedule rotation; the particular pit manager would have gone to another shift about September 1, but would still have potentially worked with the claimant on some occasions when filling in as a relief pit manager. The claimant had not brought any of his concerns regarding the pit manager's treatment of him or any concern regarding his drop in hours to anyone in management or human resources.

The claimant established a claim for unemployment insurance benefits effective January 20, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of $580.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The law presumes a claimant has voluntarily quit with good cause when he quits because of a substantial change in the contract of hire. 871 IAC 24.26(1). However, there was no change in the claimant's employment arrangement. While his average hours dropped, the evidence indicates this was primarily due to the claimant's own actions and choices, not any action or decision on the part of the employer.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973).

While a claimant does not have to specifically indicate or announce an intention to quit if his concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that he considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005); Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer." Under this logic, if in the alternative the claimant demonstrates that the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe, there would be no need for a separate showing of notice by the claimant to the employer; if the employer was already aware of an obvious problem, it already had the opportunity to address or resolve the situation. Here there was no problem which was or should have been obvious to the employer, and the claimant did not provide the employer with any notice or opportunity to address the problem he perceived. The claimant has not satisfied his burden. 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.
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> 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 representative's February 21, 2008 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of August 2, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages

for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of $580.00.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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