IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANICE E JONES
Claimant

HGI – LAKESIDE
TERRIBLE'S LAKESIDE CASINO
Employer

APPEAL NO. 08A-UI-06664-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/22/08 R: 03
Claimant: Appellant (2)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.22(2)j – Leave of Absence
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

Janice E. Jones (claimant) appealed a representative's July 21, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from HGI-Lakeside / Terrible's Lakeside Casino (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 13, 2008, in Creston, Iowa. The claimant participated in the hearing and was represented by personal representative Michael Harcourt. Carol Eckles appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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 voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 22, 1999. She worked full time as a table games dealer in the employer's casino. Her last day of work was May 11, 2008.

The claimant had been having problems with her ankle, resulting in a surgical procedure on March 6, 2008, and had gone on FMLA (Family Medical Leave) from January 30 through April 17, 2008. On April 14, the claimant's doctor gave her a note that she could return to work three days per week, and she did return under those restrictions. However, the claimant had continued problems and complications. On May 9, the claimant's doctor advised that "there is no question that her standing on her feet for extended periods of time in the casino setting has contributed to her need for surgery before and after her initial surgery on March 6, 2008."

The claimant had a second surgery on May 13 and was returned to FMLA status; the FMLA expired on May 19. The employer agreed to give a 30-day extension to the leave of absence. On June 11 the claimant's doctor released the claimant for sit-down work only until further notice. In a discussion with the claimant on June 18, the employer explained that being able to stand for at least 40 minutes at a time was an essential function of the claimant's job so it could not accommodate the claimant's restrictions, and it could not extend the claimant's leave any further.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. Leaving employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician with notice to the employer can be good cause for quitting. Iowa Code § 96.5-1-d. For the quit to be attributable to the employer, factors or circumstances directly connected with the employment must either cause or aggravated the claimant's condition so as to make it impossible for the employee to continue in employment; the claimant "must present competent evidence showing adequate health reasons to justify termination [and] before quitting [must] 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." 871 IAC 24.26(6)b.

The claimant has satisfied these requirements. The claimant has demonstrated that her medical condition was at least aggravated by the work situation. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's July 21, 2008 decision (reference 01) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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