

**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**

**STEPHEN F BEEDLE
16518 CASTELAR ST
OMAHA NE 68130**

**HARVEY'S IOWA MANAGEMENT CO INC
HARRAH'S COUNCIL BLUFFS CASINO
1 HARVEY'S BLVD
COUNCIL BLUFFS IA 51501**

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**Appeal Number: 05A-UI-01962-DT
OC: 01/16/05 R: 02
Claimant: Appellant (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-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Stephen F. Beedle (claimant) appealed a representative's February 16, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Harrah's Council Bluffs Casino (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2005. The claimant participated in the hearing and was represented Eric Hansen, attorney at law. Leisha Hammer appeared on the employer's behalf and presented testimony from one other witness, Jorg Limper. 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.

FINDINGS OF FACT:

The claimant started working for the employer on September 3, 2002. He worked full time as a pastry chef in the employer's riverboat casino. His last day of work was October 6, 2004. The claimant called in some absences after that date, but on October 11, 2004 he emailed the employer a message indicating he would be off work until further notice due to his medical condition that might require surgery. The medical condition was a circulatory condition that was not work-related.

On October 15, 2004 the employer sent the claimant the FMLA (Family Medical Leave) with the physician's certification form to be completed and returned to the employer. The paperwork was not returned promptly, although a doctor's note excusing the claimant from work from October 20, 2004 through October 31, 2004 was faxed to the employer on October 21, 2004. As this did not substitute for the physician certification in the FMLA paperwork, on October 22, 2004 the employer sent him a letter reminding him of the need to have the paperwork returned. When no response was received by October 27, 2004, the employer sent another reminder letter.

When the claimant had not returned to work as expected on November 1, 2004, the employer called and left a message for the claimant on that date and again on November 3, 2004. When there was no response, the employer sent the claimant a letter by certified mail on November 5, 2004, received on November 8, 2004, advising him that it still needed the FMLA paperwork and that if the claimant did not respond, the claimant's employment might be ended. These communications were made by the employer's human resources coordinator, April King, and her phone number was included on the letters.

On October 31 or November 1, 2004, the claimant left a message on the voice mail of the executive sous chef, Mr. Reber, asking as to what his employment status was, as he had heard rumor that he had been replaced. Mr. Reber did not return the call; it is unknown if Mr. Reber received the message. Someone else was hired, but that person's position was an executive pastry chef; the claimant's position would still have been available to him had he returned to work. However, the claimant concluded that he had been replaced, and did not make any further attempt to actually return to work or to ensure that his doctor had sent the necessary paperwork. He did not make any other response to Ms. King. When the claimant had not responded by November 15, 2004, he was removed from the employer's employee roll.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 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.

871 IAC 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.

The intent to quit can be inferred in certain circumstances. Where an employee believed that he has been discharged but has never been so informed by the employer and fails to return to work, a voluntary quit is inferred by job abandonment. Where an employee has ceased contact and has not responded to an employer's requests for necessary documentation, the employer reasonably concludes that the employer has quit his position. In this case, the claimant had a legitimate non-work-related medical reason for being off work, but failed to take the necessary steps to return to work. Benefits are denied.

DECISION:

The representative's February 16, 2005 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 15, 2004, 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.

ld/s