

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA RIDGWAY

Claimant

APPEAL NO. 07A-UI-08478-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIP-EN' NECKER'S TAP & GRILL

Employer

**OC: 07/29/07 R: 12
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit
871 IAC 26.14(7) - Late Call
Section 17A.12-3 - Non-Appearance of Party
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Tip-En' Necker's Tap & Grill (employer) appealed an unemployment insurance decision dated August 23, 2007, reference 01, which held that Angela Ridgway (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2007. The claimant provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through owner Brett Longenecker. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: Brett Longenecker and Rhonda Longenecker are married and own the bar together. The claimant was employed as a part-time bartender/waitress from October 24, 2006 through July 17, 2007. She last worked on July 12, 2007 and had previously asked for several days off work after that. On July 17, 2007, she told Mrs. Longenecker that she quit because Mr. Longenecker had fondled her on the night of July 12, 2007, when she was giving him a ride home. The claimant specifically said that Mr. Longenecker reached over and "grabbed her between the legs." Mr. Longenecker denies the allegations and wondered why the claimant waited five days to make the accusations. The claimant made a report to the police department on July 19, 2007 and was arrested for an unrelated outstanding warrant. Mr. Longenecker provided a statement to the police, but the matter has been dropped.

The claimant contacted the Appeals Section on September 26, 2007, at 10:11 a.m. The record closed at 10:10 a.m. The claimant was not available at the number provided at the scheduled time of the hearing because she was not able to make it to the phone. Her ferret had its claws stuck in the speaker and she was trying to get the ferret's claws out of the speaker and missed the phone call. The claimant said she tried to return the call immediately but the number did not go through. The claimant requested that the record be reopened.

The claimant filed a claim for unemployment insurance benefits effective July 29, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request, to reopen the record after the hearing had concluded, should be granted or denied.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the record was considered closed. The request to reopen the record is denied because the party making the request failed to participate by not being available at the telephone number provided.

The next issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling the employer that she quit. She did not participate in the hearing but she allegedly quit because of detrimental working conditions in that she claims the employer "fondled" her. However, the employer flatly denies the allegation. The administrative law judge concludes that the

employer's credible, sworn testimony to the contrary is more persuasive than the hearsay allegation of fondling.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 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.

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 unemployment insurance decision dated August 23, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$581.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw