

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN M MOZAK
Claimant

APPEAL NO. 09A-UI-10422-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D & K LANES
Employer

**Original Claim: 06/07/09
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Lynn M. Mozak filed a timely appeal from an unemployment insurance decision dated July 13, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held August 5, 2009, with Ms. Mozak participating and being represented by Timothy L. James, attorney at law. James Walz, attorney at law, appeared on behalf of the employer, D & K Lanes. Co-owner Kim Korth testified. Claimant Exhibits A and B and Employer Exhibits 1 through 9 were admitted into evidence.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lynn M. Mozak was employed as a bartender and waitress by D & K Lanes from late August 2008 until she resigned on or about June 6, 2009. She was a part-time employee whose hours varied seasonally.

Ms. Mozak was injured in a fall on March 9, 2009, while she was at work. She discovered thereafter that the employer had not obtained workers' compensation insurance, although it had had employees aside from the proprietors since the year 2000. Ms. Mozak sought treatment for her injuries. Bills and reports were submitted to the employer. The treating physician recommended a surgical procedure. Co-owner Kim Korth contacted the physician, causing the procedure to be delayed. Ms. Mozak resigned in part because of this interference.

In early June each year, Plainview, Nebraska, sponsors a clown carnival and rodeo. Residents from the town and surrounding communities attend. D & K Lanes, a bowling alley, bar, and restaurant, is very busy. There is a noticeable law enforcement presence due to the fact that two Nebraska state troopers live in the small community and the 2008 rodeo was marked by several fights among the professional bull riders. Ms. Korth was concerned that Ms. Mozak was allowing minors to be served alcoholic beverages. On one occasion, she asked the chief of police to speak with Ms. Mozak about an incident that had occurred on the previous weekend. Ms. Korth also enlisted the assistance of a 19-year-old, who successfully ordered a beer from Ms. Mozak. Ms. Korth confronted Ms. Mozak over the situation. The liquor license of D & K Lanes could be suspended for selling alcohol to

minors. Ms. Mozak also considered these warnings, as well as a warning about the operation of the business's keno machine, in reaching her decision to resign.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does.

When multiple reasons for a resignation are given, the administrative law judge must examine each reason separately and also consider the totality of the circumstances in deciding whether the evidence as a whole establishes good cause attributable to the employer for the resignation. See Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). Turning first to the warnings, the administrative law judge disagrees with the claimant's characterization of them as harassment. Violation of state gambling and liquor laws could easily have an adverse effect on the employer's business and reputation in the community. Furthermore, according to 871 IAC 24.25(28), a resignation due to a reprimand is considered to be a resignation without good cause attributable to the employer.

An individual may receive unemployment insurance benefits under Iowa law if the individual has resigned due to unlawful working conditions or due to intolerable or detrimental working conditions. See 871 IAC 24.26(3) and (4), respectively. Uncontradicted testimony in the record establishes that operation of a Nebraska business with employees without workers' compensation insurance coverage is a violation of the law. It was this violation of the law that led to the conflict between Ms. Mozak and the employer over the treatment of the injury suffered at work. The administrative law judge concludes that the employer's interference with the claimant's physician-recommended treatment plan also created intolerable or detrimental working conditions, justifying resignation.

Considering the totality of the circumstances, the administrative law judge concludes that the employer's failure to have obtained workers' compensation insurance and its interference with the claimant's medical treatment gave the claimant good cause attributable to the employer to resign.

The employer in this case is a Nebraska business, while the claimant has filed her unemployment insurance claim through Iowa because of earlier Iowa wages. In this decision, the administrative law judge addresses only the claimant's eligibility for benefits. The employer's liability, if any, for these benefits must be determined by the Nebraska Department of Labor.

DECISION:

The unemployment insurance decision dated July 13, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw