

**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**

**ROBERT S KEPHART
3027 SHAWNEE AVE
DES MOINES IA 50310**

**RACK AND ROLL PUB & GRI
4995 MERLE HAY RD
DES MOINES IA 50310**

**Appeal Number: 05A-UI-03255-MT
OC: 02/20/05 R: 02
Claimant: Respondent (2)**

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 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 18, 2005, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 14, 2005. Claimant participated. Employer participated by Tony Trimnell, General Manager, and Kelechi Ejimofor, Manager. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 20, 2005. Claimant was in a fight with a coworker, bartender. The coworker assaulted claimant. Charges were filed against the bartender. Claimant refused to work if the coworker, bartender, was still employer. Employer offered to compromise by having claimant work only when the coworker was not scheduled. The bartender worked only two days a week. Employer made numerous efforts to accommodate claimant, as a cook was needed more than a bartender. Claimant refused to return phone calls and made no effort to return to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant quit for good cause attributable to employer. The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a fight with a coworker. Employer made significant efforts to bring claimant back to work and insure his safety. Claimant rebuffed every contact. Employer made the significant accommodation by having claimant work only when the coworker was not scheduled. The bartender only worked two days a week. No intolerable or detrimental working condition has been established. Employer made immediate and corrective actions to protect claimant's safety. This is a quit without good cause attributable to 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.

The next issue concerns an overpayment of unemployment insurance benefits.

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.

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.

The administrative law judge holds that claimant is overpaid unemployment insurance benefits in the amount of \$1,322.00 pursuant to Iowa Code section 96.3-7 because a decision has determined claimant is ineligible to receive benefits due to a voluntary quit without good cause attributable to employer.

Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has requalified or is otherwise eligible.

DECISION:

The decision of the representative dated March 18, 2005, reference 01, is reversed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$1,322.00.

mdm\sc