

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L FREY
Claimant

APPEAL NO. 12A-UI-01622-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 01/01/12
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Kinseth Hotel Corporation filed a timely appeal from a representative's decision dated February 6, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on March 7, 2012. The claimant participated. The employer participated by Todd Richardson, Hearing Representative and witnesses Nick Edwards, General Manager; Tim Schneider, Director of Operations; Mike Wilson, Ownership Representative of the city of Storm Lake; and Jennifer Marburg, Human Resource Manager. Employer's Exhibits One through Four were received into evidence.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Robert Frey was employed by Kinseth Hotel Corporation from July 16, 2009 when the new employer took over the location where Mr. Frey had been previously employed until January 1, 2012 when the claimant voluntarily quit employment. Mr. Frey was most recently employed as a full-time chief engineer/maintenance manager and was paid by salary. His immediate supervisor was the general manager, Mr. Nick Edwards.

Mr. Frey left his employment after he was unwilling to follow reasonable and work-related directives that were given to him by the company's general manager and confirmed by the company's director of operations.

On December 20, 2011 Mr. Edwards, the facility general manager, met with Mr. Frey and instructed Mr. Frey to have his maintenance crew do some painting and ceiling repair work on a banquet area in the facility. The facilities were not going to be used for a number of days and the general manager believed that the condition of the ceiling and its appearance required restoration cosmetic improvement. Mr. Frey was unwilling to follow the directive indicating that he had his crews working on other more important projects. When the claimant was asked to

explain what the projects were Mr. Frey was unable to state any other than some circuit breaker work and water heater work. When the claimant was unwilling to follow additional directives that were given by Mr. Edwards the following day, Mr. Edwards contacted the company's director of operations and requested that Mr. Schneider meet with the claimant.

Mr. Schneider met with Mr. Frey and explained to the claimant that the claimant was working under the supervision of the general manager and that Mr. Frey needed to be responsive to directives given to him by the general manager. Mr. Frey was asked to prepare a outline of maintenance issues and a narrative reflecting his understanding of the directives that had been given to him by Mr. Schneider. Mr. Frey did so and Mr. Schneider and the general manager both believed that Mr. Frey would continue in employment and the claimant's failure to follow directives would no longer be an issue.

On January 1, 2012 the claimant unexpectedly submitted a written resignation to be effective immediately citing what he considered to be a "hostile work environment." Prior to resigning the claimant did not bring to the attention of the general manager, the director of operations nor the company's human resource manager any allegations of a hostile work environment. He did not bring to the attention of manager any dissatisfactions with his employment that would result in the claimant's quitting employment if the dissatisfactions were not addressed. Under company policy employees are allowed to go up the chain of command if they feel that their immediate supervisors are not responsive to work issues or needs. The claimant did not do so.

It is the claimant's position that he had historically decided what projects his maintenance employees would work on and when they would do so. The claimant believed that the general manager's request to work on the ceiling was usurping his management authority and in that way creating a "hostile work environment."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the 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.

871 IAC 24.25(22) 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:

- (22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of an intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 33 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The evidence in the record does not establish the working conditions were intolerable but it does establish that Mr. Frey was not willing to follow reasonable and work-related directives that were given to him by the facility's general manager although he had been instructed and encouraged to do so by the company's director of operations. The directive to perform some restorative and cosmetic work on a portion of the facility's banquet area was not unreasonable and it was work related. The claimant was not precluded from performing other maintenance duties that he thought were important. When the claimant unwilling to follow the directives the employer followed a reasonable course of action by having another management official confirm Mr. Frey's responsibility to follow the directives. Although the employer thought Mr. Frey was planning to conform, he unexpectedly quit his job without notice of January 1, 2012.

While the claimant's reasons for quitting may have been good-cause reasons from his personal viewpoint, the evidence in the record does not establish good-cause reasons attributable to the employer. Inasmuch as the claimant had not complained to company management about his dissatisfactions and given the employer an opportunity to rectify his dissatisfaction his quitting was without good cause attributable to the employer. The claimant's obligation to follow reasonable work-related directives were part of the claimant's job responsibility and the claimant knew or should have known that he had an obligation to follow the directives of the general manager. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits

were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated February 6, 2012, reference 01, is reversed. The claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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