

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHYLLIS D KUHLMAN
Claimant

APPEAL NO. 08A-UI-00349-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST HOSPITALITY GROUP LLC
Employer

**OC: 11-18-07 R: 02
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 7, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2008. The claimant did participate. The employer did participate through (representative) Connie Brown, General Manager and Ruth Simons, Front Desk Clerk.

ISSUES:

Did the claimant voluntarily quit her job with good cause attributable to the employer?

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a head housekeeper full time beginning August 28, 2006 through November 9, 2007 when she voluntarily quit.

On November 9 the claimant called in saying she had a flat tire would be late. The claimant never showed up for work again after that. On November 14 the claimant returned the employer's calls and indicated that she was not sure she would return to work. On November 15 the claimant called in saying she had lost her day care but would be in her next scheduled work day. The claimant never returned to work again or called to indicate she would be in to work again.

When the claimant complained about how she was getting along with Diane Cook, Ms. Brown told Ms. Cook that rumors had to stop. When the claimant complained about how Ms. Cook was acting, the employer took action to remedy the situation. The claimant could not get along with Ms. Cook who was her subordinate. The claimant also disagreed with the employer's decision to promote Ms. Cook. The claimant was not happy with the employer's staffing and personnel decisions.

The claimant was also offended that she was asked to perform some tasks like moving a television or using drain cleaning products because she was pregnant. The claimant was never disciplined for not performing any tasks and she never presented any doctor's restrictions that indicated she could not perform any task or use any particular products.

The claimant also indicated to the employer that she wanted more money. The claimant was never promised a raise.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant filed a timely appeal on December 17 as is indicated by the statement from the employee of the local office. While the appeal was not received by the unemployment Appeals Bureau, it was sent in a timely manner. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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(6), (13) 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:

(6) The claimant left as a result of an inability to work with other employees.

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). The employer has the right to allocate its personnel in accordance with its needs and available resources.

The claimant was simply unhappy that the employer made staffing and personnel changes or decisions that were not to her liking. It was not up to the claimant to decide which employees should or should not be promoted. It is clear that the claimant could not get along with Diane Cook, yet the claimant has not established that Ms. Cook treated her in a manner that created an intolerable work environment. The claimant's dissatisfaction with Ms. Cook saying she would get her job is not conduct that rises to the level to create an intolerable work environment. When the claimant complained to Ms. Brown about Ms. Cook, the employer investigated and took the action they deemed appropriate. It was not up to the claimant to decide how Ms. Cook should be treated, particularly in light of Ms. Cook's denial that she ever mistreated the claimant. The claimant was never promised a raise that was not granted. The claimant's dissatisfaction with being asked to clean drains, check for running toilets or move a television is not good cause reason for quitting. All of the tasks the claimant was asked to complete were reasonable, and when she chose not to move the television, she suffered no discipline of any kind. The claimant's inability to be able to get along with Ms. Cook as well as her desire for more money are not good cause reasons attributable to the employer for her quitting or leaving the employment. Benefits are denied.

DECISION:

The December 7, 2007, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs