

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANNEEN BROOKS

Claimant

APPEAL NO: 12A-UI-07122-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION

Employer

OC: 05-06-12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 7, 2012, reference 02, decision that determined she was voluntary quit her part-time employment. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 16, 2012. The claimant participated in the hearing. The employer indicated it did not wish to participate in the hearing.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time banquet server for Kinseth Hotel (Holiday Inn) from April 13, 2011 to December 19, 2011. At the time of hire the claimant was on a work-release program and the employer agreed to sign a letter stating the claimant would not be scheduled during times she had mandatory meetings, appointments or counseling sessions. The claimant's first manager honored the letter and worked around the claimant's schedule. At the end of October 2011 the employer changed management and the old manager explained the arrangement to the new manager but he insisted on scheduling the claimant during times she was not available due to her commitments to the work release program. He would often ask her to call her counselor and ask permission to work rather than attend required meetings, appointments or counseling sessions. Sometimes the claimant felt pressured to work even when her counselor said no and consequently she received three violations from the work release program and was required to start the program over and could not work for 90 days. She told the new manager about the situation and he said he would hold her job open because January and February were slow months and he felt responsible for her violations. When the claimant was able to return April 5 or 6, 2012, she went back to the employer and the manager told her he hired another employee to replace her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Here the claimant clearly did not intend to quit her job. While the claimant was forced to leave her job for 90 days because of the employer's actions, the employer promised to hold her job for her but when the claimant went back the employer stated it filled her job. The fact that the claimant returned to the employer to continue her employment indicates she did not intend to voluntarily quit her job.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The employer signed a letter stating it would not schedule the claimant or require her to work during times she had

commitments related to the work release program. The employer failed to honor that agreement which resulted in the claimant being violated and caused her to have to start the work release program over. At that time the claimant could not work for 90 days and the employer took responsibility for the situation and stated because of that it would hold her job open. When the claimant was able to work again she contacted the employer and was told her position had been filled. Because the claimant did not voluntarily quit her job and there is no evidence of misconduct, the administrative law judge must conclude the claimant was discharged for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The June 7, 2012, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs