

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN K KING
Claimant

APPEAL NO. 09A-UI-07319-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 04/05/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 12, 2009, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 4, 2009. Employer participated by Lonnie Payne and was represented by Robin Quon. Claimant failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

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 March 15, 2009. The claimant worked in food service for the employer. She worked in a restaurant and worked serving at banquets. On March 15, 2009 the claimant was suspended from work in the restaurant because she had entered the incorrect amount of a restaurant customer's debit card. While she corrected the improper entry it caused problems for the customer. The claimant had similar problems in the past about entering the correct amount on credit cards. The claimant was suspended from working in the restaurant and was given a written suspension. Mr. Payne told the claimant he would have to talk to headquarters which could take a week. The claimant was told by Mr. Payne she still was employed in the banquet area. She was scheduled to work on March 16, 17, and 18. The claimant did not call or show up for work. The employer has a policy, which was given to the claimant that states three consecutive days of no-call/no-show is deemed a quit and employment is terminated.

REASONING AND CONCLUSIONS OF LAW:

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant did not call or show up for three days. She is deemed to have voluntarily quit her employment.

The administrative law judge holds that the evidence has established that claimant voluntarily quit without good cause attributable to employer when claimant failed to call or show up for work for three days.

DECISION:

The decision of the representative dated May 12, 2009, reference 04, is affirmed. Unemployment insurance benefits shall be 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.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/css

