

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMARA F RAMTHUN
Claimant

APPEAL NO. 10A-UI-04568-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**Original Claim: 02/07/10
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Tamara Ramthun filed a timely appeal from a representative's decision dated March 17, 2010, reference 01, which denied benefits, finding the claimant had voluntarily quit work on February 7, 2010, because of a non-work-related illness or injury. After due notice was issued, a telephone hearing was held on May 7, 2010. The claimant participated personally. Participating on behalf of the claimant was Ms. Evelyn Ocheltree, attorney at law at Iowa Legal Aid Society. The employer participated by Ms. Jackie Nolan, hearing representative, and witnesses Ms. Mary (Lori) Saught, general manager, and Ms. Jan Kleve, housekeeping manager. Employer's Exhibits A, B, and C and Claimant's Exhibits One through Five were received into evidence.

ISSUE:

At issue is whether the claimant quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tamara Ramthun was employed as a part-time housekeeper for Kinseth Hotel Corporation beginning October 1, 2008. Ms. Ramthun's working hours varied each week depending on the employer's business necessity.

Ms. Ramthun last worked on February 5, 2010. The claimant called in at 5:30 a.m. on February 8, 2009, to indicate that she could not report to work, as her brother had unexpectedly passed away. Ms. Ramthun then continued to call in prior to each scheduled day that she was to work, indicating that she was not able to return to work due to ongoing issues with her brother's loss and the resulting grief. On February 18, 2010, the claimant called Ms. Saught, the hotel manager, and the parties had a conversation regarding the claimant's status. Ms. Ramthun was tearful and expressed problems with her brother's loss and issues relating to the medication being prescribed by her physician for her grief. In an effort to be sympathetic, Ms. Saught suggested an alternative physician and stated that the company would defer putting Ms. Ramthun back on the schedule until Ms. Ramthun notified the employer that she was able to return. The employer, up to this point, had been keeping the claimant on the schedule each

week and replacing the claimant each day with other workers when the claimant was not able to report because of her grief. The employer's intention was to keep the claimant employed but to also facilitate easier scheduling for the remaining housekeeping employees. Ms. Ramthun did not object to the employer's statement that the company would not reschedule her until she had indicated that she was ready to return. Some additional communications then took place regarding the days that the claimant could not work.

On March 19, Ms. Saught specifically requested that Ms. Ramthun come in the following week to meet with her. Ms. Saught's intent was to determine the claimant's days of availability and when the claimant desired to resume being placed on the schedule. Ms. Ramthun came to the employer's facilities on March 22; however, Ms. Saught had briefly stepped out at the time that the claimant was at the hotel. Ms. Saught responded by e-mail. However, there was no further contact with the claimant. Subsequently, the employer sent the claimant a letter on April 30, 2010, referencing the claimant's failure to reply to the manager's earlier response to the claimant's March 22 e-mail. The claimant was given until May 15, 2010, to contact the employer for scheduling. The letter informed that if the employer did not hear from the claimant by that date, she would be considered to be a "voluntary quit."

It is the claimant's position that she submitted a doctor's statement indicating, in general terms, that she was able to return to work and that she personally placed the statement into the general manager's inbox on or about February 22, 2010 (See Claimant's Exhibit Two). It is the claimant's further position that the employer's failure to schedule her led the claimant to believe that she had been involuntarily terminated from employment with the company, because the employer had not required a personal visit with the general manager before being re-scheduled to work in the past. Ms. Ramthun had opened a claim for unemployment insurance benefits with an effective date of February 7, 2010.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Ms. Ramthun left her employment with good cause attributable to the employer. It does not.

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 evidence in the record establishes that Ms. Ramthun initially requested time off work due to the grief associated with the unexpected loss of her brother. The employer was willing to accommodate the claimant's request, allowing the claimant to call off work for an extended period of time on a day-by-day basis. Based upon statements that the claimant made in telephone conversations with the general manager, the general manager concluded the claimant was still having serious issues with grief and offered to resume scheduling the claimant for work when the claimant was ready and able to return. Ms. Ramthun did not object and the parties continued to have contact, albeit sporadically. The employer did not receive a doctor's statement indicating the claimant was able to return to work. However, the employer remained ready and willing to reschedule Ms. Ramthun as soon as she advised them that she was ready to return to work and advised them of her days of availability.

Although the claimant attempted to visit with the general manager on one occasion personally, the claimant did not respond to a subsequent e-mail from the general manager requesting that the claimant do so. In a final effort to determine whether the claimant desired to remain employed, the company sent the claimant a letter on April 30 that gave her another 15 days to contact the company to demonstrate her intention to return.

Based upon the totality of the evidence in the record, the administrative law judge concludes that the claimant was not separated by the employer and that the employer considered the claimant still employed and eligible to be scheduled as of the hearing date in this matter. The administrative law judge further concludes that if the claimant has chosen not to return to available employment by May 15, 2010, the date of her separation is February 7, 2010, the initial date that the claimant began a leave of absence from the employer.

The administrative law judge finds that good cause for quitting attributable to the employer has not been established. Therefore, benefits are denied.

DECISION:

The representative's decision dated March 17, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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