

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L MAHANEY
Claimant

APPEAL NO. 13A-UI-01548-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 01/06/13
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

James Mahaney (claimant) appealed a representative's February 4, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Kinseth Hotel Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 13, 2013. The claimant participated personally. The employer was represented by Jackie Nolan, Hearing Representative, and participated by Brandy Smith-Branstad, General Manager, and Gabe Leach, Chief Engineer. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 12, 2010, as a full-time maintenance man. The chief engineer made comments of a sexual nature to the claimant in front of others while driving him to and from lunch and work. The claimant indicated to the chief engineer that he did not like this. The claimant last worked on November 25, 2012. He took vacation through December 2, 2012. He did not return from vacation because he believed his work to be intolerable. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with 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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer that he did not like what he was saying. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 4, 2013 decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css