

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH K KESSLER
Claimant

APPEAL NO. 09A-UI-14921-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WISE MOTELS INC
Employer

OC: 08/30/09
Claimant: Appellant (5)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Deborah Kessler, filed an appeal from a decision dated September 28, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 4, 2009. The claimant participated on her own behalf. The employer, Wise Motels, participated by General Manager Kathee McCrory.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Deborah Kessler was employed by Wise Motels from June 8, 2009 until September 3, 2009 as a part-time housekeeper. On Friday, August 28, 2009, Ms. Kessler called in absent because her 12-year-old daughter had the flu. She was told she had to find her own replacement and was given the names and phone numbers of available staff. Later she called back and spoke with General Manager Kathee McCrory to say she was unable to find a replacement. The general manager said she should have back-up childcare but Ms. Kessler said she did not make enough money to be able to afford daycare and her children were more important than her job. The general manager then said if she felt that way she should not return to work. Ms. Kessler confirmed the discharge with Norma, the owner's mother, later that day.

On Saturday, August 29, 2009, Ms. McCrory called the claimant and apologized for her conduct and comments the day before. The employer offered Ms. Kessler her job back and she agreed to return to work on Monday, August 31, 2009. On that day the desk clerk, Michelle, called and told the claimant she did not need to come in because the guest census had been too low. Ms. Kessler never returned to work and was no-call/no-show to work for her subsequent shifts on September 1, 2, and 3, 2009. She had decided she did not want to work for Ms. McCrory because she had been "nasty" on Friday, August 28, 2009.

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.

The claimant was told she did not need to return to work on August 28, 2009, but this was rescinded by the general manager the next day, along with an apology. The claimant agreed to continue working and work her scheduled shifts. At some point after that Ms. Kessler decided Ms. McCrory had been too "nasty" to her and she did not want to continue working for Wise Motels because of that. She did not inform anyone at the motel of her decision not to return to work as agreed.

The administrative law judge agrees Ms. McCrory might have been somewhat unsympathetic to the claimant's family situation on August 28, 2009, but the claimant should make arrangements for back up child care if she has obligations to her work. Nonetheless, the general manager did apologize for her conduct and comments, and the claimant accepted the apology and agreed to return to work. Therefore, any allegations of the manager had been "nasty" are no longer a consideration. Ms. Kessler agreed to return to work after accepting the apology and Ms. McCrory was not "nasty" to her after that. If the claimant subsequently changed her mind there is nothing in the record to support it was for good cause attributable to the employer. The claimant is disqualified.

DECISION:

The representative's decision of September 28, 2009, reference 01, is modified without effect. Deborah Kessler is disqualified as she quit work without good cause attributable to the employer. She is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css