

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JAINI JETTON
735 ALPINE ST
DUBUQUE IA 52001

KINSETH HOTEL CORPORATION
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-10412-DWT
OC: 08/15/04 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kinseth Hotel Corporation (employer) appealed a representative's September 16, 2004 decision (reference 01) that concluded Jaini Jetton (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2004. The claimant participated in the hearing. Danny Licke translated the hearing. Lucie Hengen, a representative with Employers Unity, Inc., appeared on the employer's behalf with Brian Hutchins, the general manager, and Jeff Cue, the bookkeeper, testifying on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 7, 2002. She worked as a full-time room attendant in the housekeeping department. The claimant received a copy of the employer's attendance policy when she began working. The policy informed employees they were required to notify the employer three hours before a shift started if the employee was going to be late for work. The policy also informs employees they are to contact management when they are going to be late, not a co-worker.

On April 23, 2004, the claimant received her first written warning for reporting to work late. The claimant received the written warning after she was late for work because of transportation problems. The claimant was then again four minutes late on May 6 and five minutes late on May 7. The employer gave the claimant a second written warning on May 13 for again reporting to work late. The employer told the claimant she would be discharged the next time the employer gave her a written warning for attendance problems.

The claimant was late for work on May 14, 21, 22, 25, 29, and 30, 2004. She was 3 to 30 minutes late for work these days. The claimant's supervisor talked to the claimant and told her she had to improve her attendance or she would be discharged. The claimant's supervisor tried to work with the claimant so the employer would not discharge her.

If the claimant had a doctor's appointment at 8:00 a.m., she did not go. If the claimant had previously asked for time off on August 6, the employer denied this request. On August 6, the claimant knew she was scheduled to work at 8:00 a.m. On August 5, the claimant may have told a co-worker she would be late for work because of a doctor's appointment. The co-worker did not pass this information to management. The claimant knew or should have known the employer required her to tell management when she was unable to work as scheduled. The claimant did not contact the employer the morning of August 6 to report she would be late for work. The claimant reported to work at 8:21 a.m. or 21 minutes late for work. The claimant did not tell the employer why she was late. The employer discharged the claimant on August 6 because she was again late for work. Before the claimant left, she told Cue she had been late because she was making an appointment to see a doctor. If the claimant had been late because she was ill, the employer would not have discharged her.

The claimant established a claim for unemployment insurance benefits during the week of August 15, 2004. She filed claims for the weeks ending August 21 through October 16, 2004. The claimant received her maximum weekly benefit amount of \$199.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant understood her job was in jeopardy if she did not report to work on time. After the claimant received her second written warning for attendance problems, her immediate supervisor worked with her in an attempt to keep the claimant employed. The claimant demonstrated she could report to work on time in June and July.

On August 6, the claimant did not properly report she would be late for work and was 21 minutes late. Even though the employer asked her why she was late she gave no reason. During the hearing, the claimant gave several "stories" as to why she had not reported to work on time. Since the claimant made several assertions as to what happened on August 6, her testimony is not credible. The claimant, however, never asserted she was ill and unable to work on August 6. If she had been ill, the employer would have excused the absence and the claimant would not have been discharged. Since the claimant knew or should have known her job was in jeopardy and she provided no reasonable excusable explanation as to why she was late, her repeated failure to work as scheduled amounts to an intentional and substantial disregard of the employer's interests. As of August 15, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending August 21 through October 16, 2004. She has been overpaid a total of \$1,791.00 in benefits she received for these weeks.

DECISION:

The representative's September 16, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 15, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending August 21 through October 16, 2004. She has been overpaid and must repay \$1,791.00 in benefits she received for these weeks.

dlw/kjf