

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HETAL PATEL
Claimant

KNOXVILLE HOSPITALITY LLC
Employer

APPEAL 17A-UI-10072-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/09/17
Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the April 27, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 17, 2017. The claimant, Hetal Patel, participated personally along with witness HP Patel. The employer, Knoxville Hospitality LLC (OHM Shiv Hotels Inc.), participated through Dharmendra Patel. Exhibit D1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Is the appeal timely?

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a hotel manager at the Super 8 hotel owned by Knoxville Hospitality LLC from March of 2009 until her employment ended on March 23, 2017. HP Patel, claimant's spouse, was her immediate supervisor.

HP Patel, Max Bhagat and Russell Bhakta were each members of Knoxville Hospitality LLC. Knoxville Hospitality LLC sold the Super 8 hotel in Knoxville, Iowa by virtue of a 1031 exchange effective March 23, 2017. Knoxville Hospitality LLC is still in existence and owns real estate outside of Iowa. HP Patel also owns two hotels in Pella, Iowa under different limited liability companies. Dharmendra Patel is the owner of OHM Shiv Hotels Inc.

When the Super 8 hotel was sold to OHM Shiv Hotels Inc. in March of 2017, Dharmendra Patel told HP Patel that he would be managing the hotel himself. This information was relayed to claimant. OHM Shiv Hotels Inc. hired three previous employees who were housekeeping staff

of Knoxville Hospitality LLC when the property was sold. It did not hire claimant because Dharmendra Patel was going to manage the hotel. Claimant never became an employee of OHM Shiv Hotels Inc.

Claimant filed a claim for benefits effective April 9, 2017. When claimant filed her claim for benefits, a Notice of Claim was mailed to HP Patel at 2205 N. Lincoln Street (the address of the Super 8 hotel); however, Dharmendra Patel did not open this mail because HP Patel was still collecting mail for Knoxville Hospitality LLC at this physical address. No employer statement of protest to the claim was filed because OHM Shiv Hotels Inc. did not receive the Notice of Claim.

A fact-finding interview was held regarding claimant's separation from employment with Knoxville Hospitality on April 26, 2017. Employer did not participate in the fact-finding interview because it never received notice it was occurring. HP Patel was the contact person listed for the fact-finding interview and Dharmendra Patel was never contacted. Benefits were allowed and a decision dated April 27, 2017 was mailed to employer Knoxville Hospitality LLC to HP Patel at the 2205 N Lincoln Street address in Knoxville, Iowa. Dharmendra Patel did not open any mail addressed to HP Patel and did not receive that decision on behalf of OHM Shiv Hotels Inc.

The first notice that Dharmendra Patel received advising him that claimant was receiving benefits and OHM Shiv Hotels Inc. would be liable for charges was the August 9, 2017 Statement of Charges. The Statement of Charges was addressed to OHM Shiv Hotels Inc. and mailed to 2205 N Lincoln Street. The employer filed its timely appeal of that Statement of Charges on August 21, 2017.

The Iowa Workforce Development Tax Bureau issued a decision dated May 19, 2017 finding that OHM Shiv Hotels Inc. acquired all the business of Knoxville Hospitality LLC, UI account # 363790 effective March 23, 2017 and all experience will transfer to its account. See Exhibit D1. The decision dated May 19, 2017 also found that OHM Shiv Hotels Inc. was liable for any debt Knoxville Hospitality LLC may owe Iowa Workforce Development. See Exhibit D1. OHM Shiv Hotels Inc. did not appeal this decision.

Claimant testified that she is currently working part-time as an on-call employee of Shree Om Hospitality LLC whenever another employee calls in sick. HP Patel, claimant's spouse, is an owner of Shree Om Hospitality LLC. This limited liability company owns a hotel in Pella, Iowa.

There has been no investigation and determination regarding whether claimant has been able to and available for work each week she has been filing a continued weekly claim for benefits. Based upon the claimant's testimony, the question of whether claimant has been restricting her work availability to only temporary or intermittent work until recalled by a regular employer; whether claimant's availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers; or whether claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire so that she is not considered partially unemployed shall be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the appeal filed by the employer was timely. The administrative law judge further concludes the claimant was

discharged from employment due to staff reduction. Employer's account may be charged for benefits paid.

As a preliminary matter, I find that the employer did file a timely appeal.

Iowa Code section 96.6(2) provides, in pertinent part:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The decision that found claimant was eligible for benefits was never sent to OHM Shiv Hotels Inc. or Dharmendra Patel. The employer became first aware that claimant filed a claim for benefits when it received the second quarter of 2017 statement of charges dated August 9, 2017. Employer filed a timely appeal to the statement of charges on August 21, 2017, as such, its appeal of the decision dated April 27, 2017 that was filed on August 21, 2017 was timely.

The next question is whether the claimant's separation from employment is disqualifying. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2).

Claimant never tendered a verbal or written resignation. Dharmendra Patel told HP Patel that he would be managing the hotel himself. This information was relayed to claimant. OHM Shiv Hotels Inc. hired three previous employees who were housekeeping staff of Knoxville Hospitality LLC when the property was sold. It did not hire claimant because Dharmendra Patel was going to manage the hotel. As such, claimant was discharged from employment due to staff reduction or elimination of her position.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of

recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

There was no misconduct on behalf of claimant which led to her discharge from employment. She was discharged because the Super 8 hotel had been sold and Dharmendra Patel was going to manage it himself, leaving claimant without a position. The employer failed to meet its burden of proof in establishing a voluntary quitting or disqualifying job misconduct. As such, the claimant's separation from employment is not disqualifying.

However, based upon the claimant's testimony, the question of whether claimant has been restricting her work availability to only temporary or intermittent work until recalled by a regular employer; whether claimant's availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers; or whether claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire so that she is not considered partially unemployed shall be remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The employer's appeal is timely. The April 27, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The employer's account may be charged for benefits paid.

REMAND:

The issues of whether claimant has been restricting her work availability to only temporary or intermittent work until recalled by a regular employer; whether claimant's availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers; or whether claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire so that she is not considered partially unemployed shall be remanded to the Benefits Bureau for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn