

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELLIEN LIVAI
Claimant

APPEAL NO: 10A-UI-13669-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 12/28/08
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Ellien Livai (claimant) appealed a representative's October 4, 2010 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Kinseth Hotel Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2010. The claimant participated in the hearing. Jackie Nolan of Employer's Unity appeared on the employer's behalf and presented testimony from two witnesses, Jeff Cue and Kimberly Atchison. Nora Andrike served as interpreter. 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 claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on May 10, 2008. She worked part time (about 24 hours per week) as a housekeeper at the employer's Dubuque, Iowa hotel. Her last day of work was August 31, 2010.

When the claimant arrived at work on August 31 she was summoned into a meeting with Mr. Cue, the general manager, and Ms. Atchison, the housekeeping supervisor. They wished to discuss with her a charge for long distance phone call that had been placed in a room on a day that she had the only access card for the room. The claimant denied that she had made such a call and became upset. The employer was not taking any further action on the issue, and told the claimant that she should return to her work duties. However, the claimant indicated that she was too upset because of the accusation, and that she was going to go home. The employer told her that she was not permitted to go home, that she should return to her work duties, but the claimant insisted that she was going to go home. The employer advised her that if she left, it would be treated as a voluntary quit. The claimant understood this, but proceeded to leave. When she recontacted the employer several days later, the employer confirmed that it considered her to have quit when she left contrary to the instructions given to her.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving work rather than staying and performing work as directed. The claimant did exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of being upset because an accusation or reprimand for perceived wrongdoing has been given is not good cause. 871 IAC 24.25(28). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's October 4, 2010 decision (reference 03) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of August 31, 2010, benefits are withheld until such time as 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css