

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SADIE E ADAMS
Claimant

APPEAL NO. 18A-UI-10326-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 09/09/18
Claimant: Appellant (4)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.27 – Voluntary Quit from Part-time Employment

Iowa Code Section 96.5(1)(g) - Requalification

STATEMENT OF THE CASE:

Sadie Adams filed a timely appeal from the October 8, 2018, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Adams voluntarily quit on September 1, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 30, 2018. Ms. Adams participated. Maria Vitale of Employers Unity represented the employer and presented testimony through Jerry Krumm and Brandi Branstad. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-10327-JTT. Exhibits 2 through 5 and A, B and C were received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages paid to Ms. Adams and of her base period wages (DBRO).

ISSUES:

Whether Ms. Adams voluntarily quit the most recent Kinseth/Hampton Inn employment without good cause attributable to the employer.

Whether the separation was from part-time employment.

Whether Ms. Adams requalified for unemployment insurance benefits prior after her previous separation from this employer and prior to establishing the claim that was effective September 9, 2018.

Whether the employer account of Kinseth Hotel Corporation may be charged for benefits paid to Ms. Adams.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sadie Adams was employed by Kinseth Hotel Corporation, d/b/a Hampton Inn in Mason City, during

two distinct periods. The first period of employment ended in July 2017. The most recent employment was part-time, began on August 20, 2018, and ended on September 1, 2018, when Ms. Adams voluntarily quit. On August 17, 2018, Jerry Krumm, Assistant General Manager, offered Ms. Adams a part-time position assisting the continental breakfast the hotel provides to its guests. Mr. Krumm told Ms. Adams the work hours would be 5:30 a.m. to noon. Mr. Krumm told Ms. Adams the pay would be \$9.00 per hour. Ms. Adams accepted the part-time position. On August 20, 2018, Ms. Adams completed the necessary tax and payroll paperwork. Ms. Adams was to start work on August 21, 2018 at 5:30 a.m. On August 21, Ms. Adams reported for work as scheduled, but did not clock in until she obtained an ID badge 7:08 a.m.

Ms. Adams was next scheduled to work at 5:30 a.m. on August 22, 2018, but did not work the shift. At 8:54 a.m., Mr. Krumm sent a text message to Ms. Adams asking her to let him know if she had decided to quit the employment. At 9:03 a.m., Ms. Adams sent a text message response indicating that she had overslept, had just awoke, was not quitting, but was having a hard time waking up at 4:00 a.m. Ms. Adams offered to shower and find a ride to work. Mr. Krumm responded that it was pointless for Ms. Adams to report for the remainder of the shift, given that there was one hour left for the guest breakfast. Mr. Krumm told Ms. Adams that he had previously advised her that the breakfast attendant could not be absent and asked whether her attendance was going to be a problem going forward. Ms. Adams replied that she hoped not and that it was hard to wake up that early. Mr. Krumm asked whether he could expect Ms. Adams to report for work the following day. Ms. Adams responded, "Yes."

Ms. Adams did not report for her 5:30 a.m. shift on August 23, 2018. At 8:05 a.m., Ms. Adams sent a text message to Mr. Krumm, stating that she guessed she was not able to do the job, that 5:30 a.m. was just too early for her and that she was sorry. Mr. Krumm asked Ms. Adams whether she was quitting and whether she was interested in working at the front desk and/or housekeeping. Mr. Krumm told Ms. Adams that the front desk staff had to be reliable. Ms. Adams expressed interest in the front desk work and in housekeeping. Ms. Adams and Mr. Krumm agreed that Ms. Adams would report for front desk training at 10:00 a.m. on Saturday, September 1, 2018. They further agreed that Ms. Adams would also report for front desk training on September 2 and would be on the work schedule for September 3 and 4.

Ms. Adams did not report for the September 1 training shift. At 1:01 p.m., Ms. Adams sent what amounted to a quit notice via text message. Ms. Adams wrote to Mr. Krumm, "I don't know what i want to do in life quiet [sic] yet. I'm sorry[.]" Mr. Krumm replied as follows: "Jesus christ [sic]. Send me a text saying your [sic] quoting [sic] as of today then please do [sic] I can give to corporate." Ms. Adams did not make further contact with the employer and did not report for subsequent shifts. The employer continued to have work available for Ms. Adams at the time she elected to discontinue the employment.

At the time Ms. Adams accepted the employment at the Hampton Inn, her employment with Younkers was coming to an end. At the time Ms. Adams accepted the part-time employment at the Hampton Inn, she was working full-time hours at Younkers. Ms. Adams last paid work day at Younkers was August 31, 2018.

After Ms. Adams separated from the Younkers employment and from the Kinseth/Hampton Inn employment, she established the original claim for benefits that was effective September 9, 2018. Iowa Workforce Development set Ms. Adams' weekly benefit amount at \$149.00. Ms. Adams base period for purposes of the claim consists of the second, third and fourth quarters of 2017 and the first quarter of 2018. Kinseth Hotel Corporation is the earliest base period employer in connection with the claim, based on the prior employment that ended in July 2017. Younkers is a subsequent base period employer. Ms. Adams' base period wages from

the Younkers employment well exceeds 10 times Ms. Adams' \$149.00 weekly benefit amount. The most recent employment with Kinseth/Hampton was too recent to be included in the base period wages.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(18) 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:

(18) The claimant left because of a dislike of the shift worked.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Administrative Code rule 871-24.27 provides as follows:

Voluntary quit of *part-time* employment and requalification. An individual who voluntarily quits without good cause *part-time* employment and has not requalified for benefits following the voluntary quit of *part-time* employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the *part-time* employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the *part-time* employer and benefit charges shall not be assessed against the *part-time* employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the *part-time* employer, the wages paid in the *part-time* employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the *part-time* employer shall be transferred to the balancing account.

[Emphasis added.]

The weight of the evidence establishes that Ms. Adams voluntarily quit the *part-time* Kinseth/Hampton Inn employment effective September 1, 2018 due to dissatisfaction with the work hours. Ms. Adams' text message was sufficient, given her pattern of non-appearance for shifts and the prior text messaging, to establish both an intent to sever the employment relationship and to establish overt action indicating such intent. The employer reasonably concluded from Ms. Adams' September 1 text message that she was voluntarily quitting the employment. Ms. Adams knew the work hours for the breakfast attendant position before she accepted that position. Ms. Adams knew the work hours for the front desk position before she accepted that position. Accordingly, Ms. Adams' voluntary quit from the Kinseth/Hampton Inn employment was without good cause attributable to that employer. The employer account of Kinseth Hotel Corporation will not be charged for benefits based on wages Ms. Adams' earned from the most recent period of employment. In addition, Ms. Adams would not be eligible for benefits that are based on the minimal wages from this most recent period of employment until she has worked in and been paid wages equal to 10 times her weekly benefit amount. Ms. Adams must meet all other eligibility requirements. All of the benefits that might be paid to Ms. Adams in connection with the September 9, 2018 claim, are based on the wages she earned during her base period. That base period ran from April 1, 2017 to March 31, 2018. None of the benefits that might be paid to Ms. Adams in connection with the September 9, 2018 claim are based on wages from the August 20, 2018 to September 1, 2018 Kinseth/Hampton Inn employment.

Iowa Code section 96.5(1)g provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Ms. Adams' July 2017 separation from Kinseth/Hampton Inn does not disqualify her for benefits in connection with the September 9, 2018 claim. Nor does that separation disqualify Ms. Adams for benefits that are based on the base period wages from that earlier Kinseth/Hampton Inn employment. After Ms. Adams separated from Kinseth/Hampton Inn in 2017, she earned 10 times her weekly benefit amount from the Younkers employment prior to establishing her September 9, 2018 unemployment insurance claim. In other words, Ms. Adams requalified for benefits prior to establishing her unemployment insurance claim. Ms. Adams has sufficient base period wage credits to be monetarily eligible for benefits. Ms. Adams is eligible for benefits in connection with the September 9, 2018 original claim, provided she meets all other eligibility requirements. The employer account of Kinseth Hotel Corporation shall not be charged.

DECISION:

The October 8, 2018, reference 02, decision is modified as follows. The claimant voluntarily quit *part-time* employment with this employer on September 1, 2018 without good cause attributable to the employer. The claimant requalified for benefits after her earlier, July 2017 separation from this same employer. The base period wage credits from that earlier employment shall be included in the September 9, 2018 claim. The claimant is eligible for benefits in connection with the September 9, 2018 original claim, provided she meets all other eligibility requirements. The employer's account shall not be charged. The wages from the August 20, 2018 to September 1, 2018 part-time employment shall be removed from any future claim year until the claimant has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs