

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLISON J MILLER**  
Claimant

**APPEAL NO. 09A-UI-16371-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**OC: 09/20/09**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-time Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 20, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 7, 2009. Claimant Allison Miller participated. Jackie Nolan of Employers Unity represented the employer and presented testimony through Sheri Sadowski, Executive Housekeeper; Don Weathermon, Chief Maintenance Engineer; and Brian Ossian, General Manager. In entering this decision, the administrative law judge has taken official notice of the Workforce Development records that indicate this employer is the only base period employer.

**ISSUES:**

Whether Ms. Miller voluntarily quit or was discharged from the employment. The administrative law judge concludes that Ms. Miller voluntarily quit.

Whether Ms. Miller's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Allison Miller was employed by Kinseth Hotel Corporation as a part-time guest service representative (front desk clerk) at the employer's Days Inn Motel in Cedar Falls. Ms. Miller started the employment in 2007 and separated from the employment on September 20, 2009. Ms. Miller's immediate supervisor was Cindy Ireland, Guest Services Manager. The employer operates Holiday Inn Hotel across the parking lot from the Days Inn. Several members of the management staff divide their time and duties between the two facilities.

On Sunday, September 20, 2009, Ms. Miller was scheduled to start work at 3:00 p.m. Ms. Miller needed to be late for work so that she could take her daughter to the doctor. Between 2:15 and 2:30 p.m., Ms. Miller contacted the guest services representative on duty, Kimmie Roberts, and asked Ms. Roberts if she could stay an extra hour. Ms. Roberts said she could not. Ms. Miller then told Ms. Roberts she would be ten minutes late. A few minutes later, Ms. Miller received a call from Ms. Ireland, who was off-duty at the time. Ms. Ireland told Ms. Miller she had just

received a call from Sheri Sadowski, Executive Housekeeper, about Ms. Miller being absent from work. Ms. Miller assured Ms. Ireland she would only be late and that she had worked it out with Ms. Roberts.

Ms. Miller arrived at work at 3:15 p.m., upset that Ms. Sadowski had contacted Ms. Ireland. When Ms. Miller arrived she found Ms. Roberts and Ms. Sadowski speaking at the front desk. Ms. Sadowski was one of the managers on duty and Ms. Miller knew Ms. Sadowski had supervisory authority. Ms. Miller began by asking Ms. Roberts when she had she was not coming to work and Ms. Roberts indicated Ms. Miller had never said she was not coming to work. Ms. Miller then scolded Ms. Sadowski and told her she had no business calling Ms. Ireland when the prior communication had not involved Ms. Sadowski. Ms. Miller continued her tirade and told Ms. Sadowski to go back to cleaning rooms instead of worrying about her. Ms. Sadowski then directed Ms. Miller to leave. Ms. Miller said she would not leave. Ms. Miller told Ms. Sadowski that if Ms. Sadowski wanted to cover her shift she would leave. Ms. Sadowski then left the Days Inn for the Holiday Inn to get another manager to assist in dealing with Ms. Miller. The employer arranged for another employee to cover Ms. Miller's shift.

Ms. Sadowski spoke to Don Weathermon, Chief Maintenance Engineer, about her encounter with Ms. Miller and Ms. Miller's refusal to leave. Mr. Weathermon also exercised supervisory authority. Mr. Weathermon telephoned Brian Ossian, General Manager, to update him on the situation and ask for guidance. Mr. Ossian was off-duty and on a family outing. Mr. Ossian directed Mr. Weathermon to tell Ms. Miller to leave for the day and he would further address the matter when he returned to work.

Mr. Weathermon went to the Days Inn and spoke to Ms. Miller. Ms. Miller knew that Mr. Weathermon held supervisory authority. Mr. Weathermon told Ms. Miller he had spoken to Mr. Ossian, that Ms. Miller had to go now, and that matter would be sorted out later. Ms. Miller said she needed to speak with Ms. Ireland before she left. Mr. Weathermon told Ms. Miller he had spoken to Mr. Ossian and that Ms. Miller needed to go. Ms. Miller then said she wanted to fill out an incident report before she went. Mr. Weathermon reasserted that she needed to leave for the day. Ms. Miller understood that the employer was only directing her to leave for the day. Ms. Miller understood that Mr. Weathermon had spoke to Mr. Ossian and was acting on authority from Mr. Ossian. Ms. Miller told Mr. Weathermon that since she could not speak to Ms. Ireland or Mr. Ossian, she was resurrecting the quit notice she had given some time before but had earlier rescinded. Ms. Miller told Mr. Weathermon that she was quitting the employment. Ms. Miller then left the workplace.

Ms. Ireland spoke to Mr. Ossian later in the day for an update. Mr. Ossian told Ms. Ireland that he had Mr. Weathermon send Ms. Miller home and that they would deal with the matter the next day. Mr. Ossian spoke to Mr. Weathermon the next day and received an update regarding what had transpired on Sunday after Mr. Weathermon spoke to Mr. Ossian. Ms. Miller continued to be on the schedule to work additional shifts. Ms. Miller never returned to the employment.

Ms. Ireland had recently reprimanded Ms. Miller for tardiness, but the employer had at no point conveyed to Ms. Ireland that she was discharged from the employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The weight of the evidence in the record establishes a voluntary quit, not a discharge. Ms. Miller understood on Sunday, September 20, that the employer was only sending her home for the day due to her inappropriate behavior. Ms. Miller understood at the time that the employer was neither suspending her for more than that one day nor discharging her from the employment. Ms. Miller elected not to return to the employment, rather than return and deal with any consequences that might flow from her inappropriate conduct.

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.

The one-day suspension on September 20 amounted to a reprimand and Ms. Miller's voluntarily quit amounted to a quit in response to a reprimand. Such quits are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28). Based on the evidence and the law, the administrative law judge concludes that Ms. Miller voluntarily quit the employment without good cause attributable to the employer.

Workforce Development records that indicate this employer is the only base period employer. Accordingly there are no other base period wage credits upon which benefits may be based. See 871 IAC 24.27.

Ms. Miller is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Miller.

#### **DECISION:**

The Agency representative's October 20, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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