

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J ALLEN
Claimant

APPEAL NO. 08A-UI-07969-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 12/30/07 R: 02
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kinseth Hotel Corporation filed a timely appeal from an unemployment insurance decision dated August 26, 2008, reference 03, that allowed benefits to Mary J. Allen. After due notice was issued, a telephone hearing was held September 23, 2008 with Ms. Allen participating. Morgan Peterson of Unemployment Services LLC represented the employer in the hearing. Mike Heffling and Rhonda Stansberry testified. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Mary J. Allen was employed as a banquet captain by Kinseth Hotel Corporation from September 5, 2007 until she resigned July 7, 2008. Her hours and earnings fluctuated seasonally.

Ms. Allen was aware of the seasonal variation in hours and had received unemployment insurance benefits while she was partially unemployed in the winter. Rather than continuing to work when work was available, however, Ms. Allen resigned in July 2008 in order to seek other employment. She has received unemployment insurance benefits since filing an additional claim effective June 22, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant left work with good cause attributable to the employer. She did not.

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 claimant has the burden of proof. See Iowa Code section 96.6-2. The fact-finding decision allowed benefits to Ms. Allen upon the conclusion that she resigned because of a substantial change in the conditions of employment. The evidence before the administrative law judge, however, establishes a seasonal ebb and flow of the hours and earnings of a banquet captain. It also establishes that Ms. Allen was aware of such fluctuations and had received unemployment insurance benefits in the past during periods of partial unemployment. She could have done the same in the summer of 2008, continuing to work when it was available and seeking work when she was not on duty. Instead, she resigned in order to seek other employment. A resignation for such a reason is not considered to be for good cause attributable to the employer. See 871 IAC 24.25(3).

The claimant has received unemployment insurance benefits since this resignation. The question of whether the benefits must be repaid is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated August 26, 2008, reference 03, is reversed. The claimant quit work on July 7, 2008 without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of whether she must repay the benefits she has received is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs