

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DEBRA S DIRKSEN  
30215 – 140<sup>TH</sup> AVE  
LONG GROVE IA 52756**

**BRISTOL HOTEL MANAGEMENT CORP  
% BASS HOTEL & RESORTS INC  
PO BOX 182366  
COLUMBUS OH 4318-2366**

**Appeal Number: 04A-UI-00493-SWT  
OC 11/23/03 R 04  
Claimant: Respondent (2-R)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 6, 2004, reference 01, that concluded the claimant was laid off due to lack of work. A telephone hearing was held on February 5, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Ray Kraklio. Diedra Hamilton participated in the hearing on behalf of the employer with witnesses, Rick Peterson, Marilyn Sellers, and Joey Torres.

FINDINGS OF FACT:

The claimant worked for the employer as a room attendant from March 21, 2001 to July 1, 2003. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant was scheduled to work on July 4, 5, 6, 9, and 10, 2003. The claimant had requested to take the day off on July 4, but had been informed by the housekeeping director, Marilyn Sellers, that everyone needed to work that day and her request was denied. The claimant was absent from work without permission and without notice to the employer on July 4. The claimant reported to work on July 5, but was sent home by her immediate supervisor, Joey Torres, and told to report to work the following day to speak with Sellers about her unreported absence. The claimant did not come in on July 6 to speak with Sellers or return to the hotel afterward. Neither the claimant nor the employer had any further contact again.

The claimant filed a claim for unemployment insurance benefits with an effective date of November 24, 2002, to file for partial unemployment insurance benefits for weeks in which she was working part time. She filed for and received \$3,562.80 in benefits from the weeks between July 6, 2003 and November 15, 2003. The claimant did not report to the Agency that she was not longer working for the employer so that the employer was given an opportunity to protest the claim. The claimant filed a second claim for unemployment insurance benefits with an effective date of November 23, 2003. She filed for and received \$2,057.00 in benefits from the weeks between November 23, 2003 and February 7, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe that the claimant was informed that she should wait to hear from the employer before returning to work. She was sent home for one day only. I believe Torres' testimony that the claimant was told to return to work on July 6 to speak with Sellers about her absence is true. The claimant then abandoned her job by failing to return to work or contact the employer again.

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 evidence fails to show good cause for the claimant to quit her job. The requirement to come in and speak to Sellers about her absence was entirely reasonable. The claimant did not report to work as instructed and then had no further contact with the employer.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective July 6, 2003, and was overpaid \$5,619.80 in benefits for the weeks between July 6, 2003 and February 7, 2004.

DECISION:

The unemployment insurance decision dated January 6, 2004, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$5,619.80 in unemployment insurance benefits, which must be repaid. The case is remanded to the Agency to change her status to show that she is not temporarily unemployed.

saw/b