

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

MARSHA A SPEARS
200 8TH ST
WEST DES MOINES IA 50265

GENERAL PARTNER MOTEL #6
GROUP INC ET AL
MOTEL 6 OPERATIONS LP
C/O JON JAY ASSOCIATES
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 04A-UI-03345-RT
OC: 02/22/04 R: 02
Claimant: Respondent (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2 – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, General Partner: Motel 6, Group Inc., et. al., Motel 6 Operations LP, filed a timely appeal from an unemployment insurance decision dated March 16, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Marsha A. Spears. After due notice was issued, a telephone hearing was held on April 14, 2004, with the claimant participating. Bill Holmes, Area Manager for Motel 6, and Scott Pokorny, former General Manager for Motel 6, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer, most recently as a full-time relief general manager, from 2002 until she separated from her employment on January 23, 2004. The claimant had previously worked for the employer as well. When the claimant was rehired in 2002, she was hired as a guest clerk in Des Moines, Iowa and worked there for approximately 16-18 months. The claimant wanted to be a manager and undertook the employer's training for such a position in October 2003. Since the employer had no regular manager positions, the claimant was employed as a relief general manager. A relief general manager is assigned to motels in the area where a manager has been lost for whatever reason and works as a manager until a new manager is in place. The claimant was aware of this and knew that there would be travel involved when she began the training as a general manager and accepted the relief general manager position. After the claimant's training in November 2003, the claimant was assigned as a relief general manager to the Motel 6 at the airport in Milwaukee, Wisconsin. The claimant consented to go there. This assignment was to last until approximately mid-February 2004. The claimant's mother became ill and the claimant had to return to Des Moines, Iowa on two different occasions during the time that she was assigned to the Milwaukee Airport Motel 6. On the first occasion, the claimant left the motel without notifying upper management. When she returned, she was told that she needed to notify the upper management so that they could find someone to replace her at the Motel 6. The claimant left a second time and did notify the employer but left early and returned late. The claimant received a second warning.

The claimant wanted to be a manager in the Des Moines area or at least in Iowa, but since there was no position available she was to be a relief general manager until such a position opened. When the claimant's mother became ill, the claimant requested a transfer to a Motel 6 in Des Moines, Iowa or in Iowa. The employer was working on a transfer or position for the claimant at a Motel 6 in Cedar Rapids, Iowa. Before that position materialized and when the claimant's assignment at the Motel 6 at the Milwaukee Airport was nearing completion, the claimant was reassigned to a Motel 6 in Madison, Wisconsin. The claimant did not want this position and basically refused to take the position. The employer was working to get the claimant a position in Cedar Rapids, Iowa so that she could be closer to Des Moines and her mother and this materialized on January 23, 2004. Both of the employer's witnesses, Scott Pokorney, Former General Manager for Motel 6, and Bill Holmes, Area Manager for Motel 6, both of whom were working to get the claimant transferred to Cedar Rapids, attempted to call the claimant on January 23, 2004. However, the claimant had already left the Motel 6 at Milwaukee Airport without informing either of them or any other management of the employer and had returned to Iowa. The claimant left her keys in the drawer and simply left the motel. There would have been some time thereafter for logistics to be accomplished to get the claimant transferred to Cedar Rapids. However, none of that was done because the claimant had left her employment. Prior to or on January 23, 2004, the claimant was never informed by anyone at the employer that she was discharged or fired. The claimant did express concerns to the employer about getting a job in Iowa and indicated an intention to quit if her concerns were not addressed. The employer was attempting to relocate the claimant to Iowa, but had not done so before the claimant left the Motel 6 at the Milwaukee Airport. The claimant did contact the Des Moines Motel 6 and offered to return as front desk clerk, but was not hired. The claimant also offered to go back as a relief general manager, but only in the state of Iowa and not for the entire area as she had been previously.

The employer never made any promises to the claimant that she would be able to get a position in Des Moines or in Iowa, but the employer did indicate to the claimant that it would try to do so and was working on such a transfer.

Pursuant to her claim for unemployment insurance benefits filed effective February 22, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,750.00 as follows: \$250.00 per week for seven weeks from benefit week ending February 28, 2004 to benefit week ending April 10, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

871 IAC 24.25 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.

871 IAC 24.25(20), (21), (22), (23), (27) provides:

- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (23) The claimant left voluntarily due to family responsibilities or serious family needs.
- (27) The claimant left rather than perform the assigned work as instructed.

871 IAC 24.25(28), (30) 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:

(28) The claimant left after being reprimanded.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

The first issue to be resolved is the character of the separation. The employer adamantly maintains that the claimant left her employment voluntarily when she left the Motel 6 at the Milwaukee Airport without notifying anyone and simply left her keys in the drawer and returned to Des Moines, Iowa. The claimant maintains that she was discharged. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily. When asked to characterize her separation the claimant was equivocal about whether she was discharged, but finally so testified. However, the claimant was initially unable to state who had discharged her, but finally said it was the two employer's witnesses, Scott Pokorney, Former General Manager for Motel 6 and Bill Holmes, Area Manager for Motel 6. Both deny telling the claimant that she was discharged prior to the day they said she quit on January 23, 2004. The claimant seems to concede that she did in fact leave the Motel 6 at the Milwaukee Airport and further concedes that she did not tell anyone when she was leaving, but stated that she was told that she had to leave the Milwaukee Motel 6 and transfer to the Madison, Wisconsin Motel 6. The claimant's testimony, however, is not credible because she also testified that she had never refused to go to the Madison, Wisconsin Motel 6. But the claimant did not go to the Madison, Wisconsin Motel 6, but returned to Iowa. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily when she left the Motel 6 at the Milwaukee Airport without informing anyone and returned to Des Moines, Iowa rather than to Madison, Wisconsin. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. There is a great deal of evidence as to the claimant's dissatisfaction with being a relief general manager and having to work first at the Motel 6 at the Milwaukee, Wisconsin Airport and then the Motel 6 in Madison, Wisconsin. However, all the parties agree that the claimant had consented to go to the Motel 6 in Milwaukee. The administrative law judge likens this situation to a claimant who leaves due to a commuting distance when the claimant was aware of the distance when hired. The claimant was aware that she would be traveling when she accepted the position as relief general manager and leaving work because of travel is not good cause

attributable to the employer. Neither is leaving work rather than perform the assigned work as instructed. There was evidence that the claimant had left the premises on two occasions and had been reprimanded, but again this is not good cause attributable to the employer.

It is uncontroverted that the claimant's mother was ill during this period and that she had to return to Des Moines occasionally to take care of her mother, but leaving work voluntarily due to family responsibilities or serious family needs or compelling personal reasons when the period of absence exceeds ten working days is not good cause attributable to the employer. The administrative law judge further concludes that Iowa Code Section 96.5-1-c does not apply here because there is not a preponderance of the evidence that the claimant left her employment for the necessary and sole purpose of taking care of her mother and further no evidence that her mother has sufficiently recovered and that the claimant has immediately returned to the employer and offered her services as she had been providing prior to her quit. There was some evidence that the claimant offered to go back to work as a desk clerk or as a relief general manager, but only in Iowa and this was not the position she held prior to her quit.

The administrative law judge also concludes that there is not a preponderance of the evidence that the employer willfully and substantially breached its contract of hire with the claimant. See 871 IAC 24.26(1). There is not a preponderance of the evidence that the claimant was ever promised a position in Iowa or in Des Moines and even the claimant seems to concede this. The employer did inform the claimant that they would try to get her into Iowa and in fact, the employer was working on that and had gotten her a position in Cedar Rapids, Iowa, but the claimant had already quit by the time that materialized. The evidence establishes that at all material times hereto the claimant understood she was going to be a relief general manager and this was going to necessitate traveling to different motels until such time as she could be assigned to a motel that was agreeable to all parties. The claimant testified that there was a Motel 6 position in Des Moines, Iowa, but this is refuted by the employer's witnesses who testified that there was a position, but that had been filled prior to the claimant's becoming a relief general manager. The claimant bases her testimony on a statement by Mark Papineau who is in Human Resources but a person in Human Resources is not authorized to assign the claimant and probably is not aware of the details of the vacant positions or the filling of those positions.

The administrative law judge is not without sympathy for the claimant who wanted to return to Iowa so as to be near her mother who was ill, but is constrained to conclude that the claimant has failed to demonstrate by a preponderance of the evidence any good cause attributable to the employer for her quit. In fact, the claimant "jumped the gun" in quitting because the employer had arranged a position for her in Cedar Rapids, Iowa, but the claimant had already quit. Further, the claimant was aware that the position she accepted as relief general manager was going to necessitate travel and that never changed.

Accordingly, and for all the reasons set out above, the administrative law judge is constrained to conclude that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such 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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,750.00 since separating from the employer herein on or about January 23, 2004 and filing for such benefits effective February 22, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision dated March 16, 2004, reference 01, is reversed. The claimant, Marsha A. Spears, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits, because she left work voluntarily without good cause attributable to the employer. The claimant is overpaid unemployment insurance benefits in the amount of \$1,750.00.

kjf/b