

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SIERRA E D'ESTAING-ORSSTEN Claimant	DIA APPEAL NO. 20IWDUI0080 IWD APPEAL NO. 20A-UI-02849
GATEWAY HOTEL & CONFERENCE LLC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC:3/15/20 Claimant: Appellant (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Sierra D'estaing-Orssten, claimant, filed a timely appeal from an April 1, 2020, (reference 01) unemployment insurance decision that denied unemployment benefits because she voluntarily quit her job at Gateway Hotel and Conference.

A telephone hearing was held on April 29, 2020. The parties were properly notified of the hearing. The claimant participated personally and was self-represented. Gateway Hotel and Conference participated through Kelsey Jury, human resources manager. Neither party submitted exhibits.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
Was the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

D'estaing-Orssten was a full-time employee at Gateway Hotel and Conference. She was hired as a server in August 2017, and she was most recently employed as a shift supervisor, bartender, and server. She submitted a written two-week notice to Brian Osborne, the food and beverage manager, on or about February 10, 2020. D'estaing-Orssten put her resignation letter in Osborne's employee mailbox. The letter contained her name, the date it was written, and her anticipated last day of employment. Her last shift at Gateway was February 23, 2020.

D'estaing-Orssten's direct boss was Stephen Hueholt, restaurant manager. She had talked to Hueholt and Osborne about cleanliness and food safety issues. She submitted a two-week notice in April 2019, but she spoke with Hueholt and another employee and agreed to continue working

at Gateway. D'estaing-Orssten specified she resigned from Gateway because of a lack of leadership and cleanliness/food safety issues. Her job was not in jeopardy at the time she resigned. She did not want to resign, but she did not believe managers would make changes she believed were necessary. D'estaing-Orssten did not meet with Jury prior to resigning.

Kelsey Jury began working as the human resources manager at Gateway in October 2019. Hueholt and Osborne were on furlough at the time of the administrative hearing and did not participate in the hearing. Jury met with D'estaing-Orssten for her exit interview but did not meet with her prior to her resignation. Jury noted Gateway was "not the best fit" for D'estaing-Orssten. Jury did not believe Gateway has been cited for any food safety violations.

REASONING AND CONCLUSIONS OF LAW:

The April 1, 2020, (reference 01) unemployment insurance decision that found D'estaing-Orssten ineligible for benefits is affirmed.

Iowa Code section 96.5 specifies:

"An individual shall be disqualified for benefits . . . if the individual has left work voluntarily without good cause attributable to the individual's employer . . ." 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." Iowa Admin. Code r. 871.24.45. Certain reasons for a voluntary quit are presumed to be without good cause attributable to the employer. One of the specified reasons presumed to be without good cause is "when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation." 871-24.25(37). Leaving employment because of dissatisfaction with the work environment is also considered to be a voluntary quit without good cause attributable to the employer. 871-24.25(21). The claimant has the burden of proof to show she should not be disqualified for unemployment benefits, and she did not provide evidence the working conditions at Gateway Hotel and Conference were unsafe or unlawful. 871-24.25; 871-24.26(2), (3). I find D'estaing-Orssten did not agree with managers' decisions regarding cleaning and food safety and chose to resign.

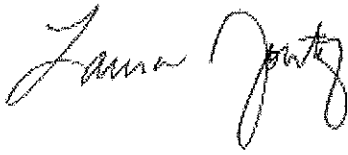
It is undisputed D'estaing-Orssten resigned from Gateway Hotel and Conference. She resigned her position in writing, and her employer accepted the resignation. Because D'estaing-Orssten's voluntary quit was not attributable to her employer, she is not eligible for unemployment benefits.

DECISION:

The April 1, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

REMAND:

The issue of whether the claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination consistent with this decision.



Laura Jontz
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division
515-281-7165

May 1, 2020

Decision Dated and Mailed

LRJ:lb

CC: Sierra E D'estaing-Orssten (by first class mail)
Gateway Hotel & Conference, LLC (by first class mail)
Nicole Merrill (email)
Joni Benson (email)

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.