

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

CARMEL STEWART  
4225 NW 11<sup>TH</sup> ST #7  
DES MOINES IA 50313

GENERAL PARTNER MOTEL 6 GP INC  
C/O JON-JAY ASSOCIATES  
PO BOX 182523  
COLUMBUS OH 43218-2523

Appeal Number: 04A-UI-01784-ET  
OC 01-18-04 R 02  
Claimant: Appellant (1)

**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 Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 12, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 31, 2004. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of hearing and did not participate in the hearing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time guest service representative, scheduled to work 7:00 a.m. to 3:00 p.m., for Motel 6 from March 10, 2003 to January 13, 2004. She was verbally warned

about tardiness and was issued a written warning December 26, 2003, after she failed to call or show up for work December 25, 2003. The claimant refused to sign the warning and testified Relief Manager Preston Miles told her not to come in December 25, 2003, because they were going to “play a trick” on General Manager Anna Davis. Although Mr. Miles was present when Ms. Davis issued the written warning to the claimant December 26, 2003, the claimant did not tell her that Mr. Miles told her not to come in. The claimant testified Mr. Miles sexually harassed her in late November or early December 2003 by asking what she was going to give him after he gave her money to balance her drawer. On another occasion he stated his wife was going out of town and he needed company and then recited what he was going to make for dinner. He did not invite the claimant to his house. On January 13, 2004, Mr. Miles told the claimant she was “not working out” in the 7:00 a.m. to 3:00 p.m. guest service shift because of her tardiness and attendance and offered her different shifts but the claimant did not want to change her hours and chose to quit her job.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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 proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998). While the claimant maintains Mr. Miles sexually harassed her, the administrative law judge cannot conclude the two incidents she described rise to the level of sexual harassment. Although Mr. Miles comments may have been unprofessional, his asking her what she was going to give him for his money and stating his wife was out of town without inviting the claimant to come over, are not sufficient to find his conduct was sexual harassment and therefore good cause for the claimant to leave her job. Instead, the administrative law judge concludes the claimant left her job because the employer proposed changing her schedule due to her attendance on the 7:00 a.m. to 3:00 p.m. shift. The claimant first stated she was absent December 25, 2003, because she had to attend court. When the administrative law judge pointed out that court is not held on Christmas, the claimant stated she was absent because Mr. Miles told her not to come in as a “trick” on Ms. Davis, but she admits she did not tell Ms. Davis that was the reason for her absence when Ms. Davis issued her a written warning for that absence. The administrative law judge did not find the claimant's testimony regarding her attendance credible and concludes that she voluntarily left her job when the employer notified her it was changing her hours because of her attendance on the 7:00 a.m. to 3:00 p.m. shift. The claimant has not established that her leaving was for good cause attributable to the employer. Benefits are denied.

DECISION:

The February 12, 2004, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/b