

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

JUSTINE R PASTENA
LOT 2
700 – 41ST AVE DR SW
CEDAR RAPIDS IA 52404

THARALDSON LODGING 1-A INC
C/O ADP UNEMPL GRP/TALX
PO BOX 66744
ST LOUIS MO 63166

Appeal Number: 05A-UI-06731-DWT
OC: 05/08/05 R: 03
Claimant: Respondent (4)

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 Quit

STATEMENT OF THE CASE:

Tharaldson Lodging 1-A, Inc. (employer) appealed a representative's June 14, 2005 decision (reference 06) that concluded Justine R. Pastena (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 18, 2005. The claimant participated in the hearing with a witness, William Payne, her boyfriend. Gregory Onello, a representative with ADP-TALX, appeared on the employer's behalf with Marilyn Soukup, the executive housekeeper, and Michael Welcher, the general manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 9, 2003. She worked as a part-time housekeeper. Soukup and Sandra Miller, the assistant executive housekeeper, supervised the claimant. During the week Soukup primarily supervised the claimant and during the weekends Miller was the claimant's primary supervisor.

In mid-December 2004, Miller reprimanded the claimant for taking too long to get rooms cleaned and how the claimant performed some of her cleaning duties. Miller's reprimand included inappropriate language directed toward the claimant. The claimant was upset with Miller's language and the way in which Miller reprimanded her. The claimant did not get along with Miller and believed Miller treated her inappropriately. While the claimant may have complained about Miller's treatment of her to Welcher and Soukup, the claimant did not effectively communicate her concerns because neither person remembered any complaints the claimant made about Miller.

January 15, 2005, was the claimant's last day of work. Miller or another co-worker may have complained about the way the claimant performed her work. Soukup was not at work on January 15. The claimant decided to quit and told Miller she was quitting. The claimant quit because of the way in which Miller and other employees treated her.

Neither Welcher nor Soukup were told that the claimant quit. When the claimant did not report to work or call in for three consecutive days, Welcher checked up on the claimant. The claimant then talked to Welcher and asked for her job back. Although Welcher indicated he would think about the claimant returning to work, the employer did not allow the claimant to rescind her resignation.

The claimant filed claims for the weeks ending June 18 through July 2, 2005. She received a total of \$386.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When the claimant informed Miller she was quitting and then did not report to work for three days, the claimant voluntarily quit her employment as of January 15, 2005. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits without good cause when she leaves employment after being reprimanded or has a personality conflict with a supervisor. 871 IAC 24.25 (28) and (22). The law also presumes a claimant voluntarily quits with good cause when she quits because of intolerable working conditions. 871 IAC 24.26(1). The facts indicate the claimant had compelling personal reasons for quitting. The claimant and Miller had a personality conflict. Miller may even have made inappropriate comments to the claimant, but

the claimant did not report Miller's conduct to Soukup or Welcher. As a result, even if Miller made inappropriate comments, the employer had no opportunity to address the claimant's concern or resolve the problem. The fact the claimant attempted to rescind her resignation points to the fact, she resigned in frustration after Miller reprimanded her instead of quitting because of intolerable working conditions. The evidence does not establish that the claimant quit for reasons that qualify her to receive unemployment insurance benefits.

When a claimant quits a part-time job without good cause, she may still be eligible to receive benefits if she has wages credits from other employers in her base period. The record indicates the claimant earned wage credits from other base period employers. Therefore, even though the claimant has not requalified by earning ten times her weekly benefit amount since January 15, 2005, she may be eligible to receive benefits if she is monetarily eligible. Therefore, the issue of whether the claimant is monetarily eligible to receive benefits when wage credits the claimant earned from the employer are excluded is remanded to the Claims Section to determine. Since the claimant received benefits for the weeks ending June 18 through July 2, the issue of whether the claimant has been overpaid any benefits during these weeks is also remanded since her maximum weekly benefit amount may be changed as a result of this decision.

DECISION:

The representative's June 14, 2005 decision (reference 06) is modified in the employer's favor. The claimant voluntarily quit a part-time job for reasons that do not qualify her to receive unemployment insurance benefits. As a result, the employer's account will not be charged. Even though the claimant has not requalified to receive benefits, she may be eligible to receive benefits as of May 8, 2005, if she is monetarily eligible based on wages credits she earned from other base period employers, but not the employer. The issues of whether the claimant is monetarily eligible and whether the claimant has been overpaid any benefits are remanded to the Claims Section to review and issue a written decision.

dlw/pjs