

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JUSTIN M HENDERSON
Claimant

APPEAL NO. 07A-UI-06991-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**OC: 06/17/07 R: 04
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Kinseth, filed an appeal from a decision dated July 9, 2007, reference 01. The decision allowed benefits to the claimant, Justin Henderson. After due notice was issued, a hearing was held by telephone conference call on August 1, 2007. The claimant provided a telephone number to the Appeals Section. That number was dialed at 1:00 p.m. and the only response was an answering machine/voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 1:11 p.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.. The employer participated by Area Food and Beverage Director Connie Flicting, and was represented by Unemployment Services in the person of Rachael Tompson

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Justin Henderson was employed by Kinseth from August 6, 2005 until June 8, 2007, as a full-time general cleaner in the public areas. On June 8, 2007, Area Food and Beverage Director Connie Flicting was acting general manager and requested the Executive Housekeeper Fay Locke to assign one of the general cleaners to shampoo the carpet in the front lobby.

Shortly thereafter Ms. Locke and Mr. Henderson approached Ms. Flicting to discuss the fact the claimant refused to shampoo the carpet, stating it was not his job. In fact, any cleaning to be done in any of the public areas was included in his job description and he had shampooed carpets in the past. Ms. Flicting said it was part of his job and he needed to follow the directions of his supervisor. The claimant became belligerent at that point, saying he did not "have to fucking do this" and that the employer could not "tell [him] what to do." Ms. Flicting finally told him he had a choice, he could shampoo the carpet as directed or clock out and go home and not come back. He elected to clock out and not return.

Justin Henderson has received unemployment benefits since filing a claim with an effective date of June 17, 2007.

The record was closed at 1:11 p.m. At 1:45 p.m. the claimant called and requested to participate. He had received the notice of hearing but confused the dates, believing the hearing was scheduled August 6, 2007, and did not have his cell phone with him when the administrative law judge called.

REASONING AND CONCLUSIONS OF LAW:

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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant is considered a voluntary quit because it was entirely his decision to leave employment. He refused to perform his regular job duties and elected to clock out and go home and "not return." Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

The claimant has requested the record be reopened because he was not present to receive the call when it was made at the time the hearing was scheduled. It is the responsibility of the parties to read the instructions on the notice of hearing and be available at the time and date it is scheduled. Failure to read the instructions, or failure to keep track of the time and date of the hearing, does not constitute good cause to reopen the record under 871 IAC 26.14(7).

DECISION:

The representative's decision of July 9, 2007, reference 01, is reversed. Justin Henderson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$810.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css