

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EMMA M HARRIS**

Claimant

**APPEAL NO. 12A-UI-09309-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**

Employer

**OC: 06/24/12**

**Claimant: Respondent (5-R)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 26, 2012 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on August 27, 2012. Claimant participated. Employer participated through general manager Missy Jackson and was represented by Jackie Nolan of Employer's Unity.

**ISSUE:**

Was claimant laid off due to a lack of work or did she voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a housekeeper from October 25, 2011 and was separated from employment on January 22, 2012. Her last day of work was January 10, 2012. The employer argues that she quit because she had found full-time employment at Keokuk Area Hospital and continued work was available. Housekeeping supervisor Ruth Anderson gave Jackson a handwritten note purporting to be a resignation note written by the claimant with 2011 dates. The note was not admitted to the record because of a lack of foundation. Anderson called her repeatedly to let her know there was no work available and not to report because business was down after the holidays. She did not have a job or work at the hospital since January 1, 2012.

She earned \$427.00 from the employer during the first quarter of 2012. She worked at Dave's Place in Keokuk for a week in the first quarter of 2012 and earned \$404.00 but did not earn enough to requalify. Earnings for the first quarter of 2012 total \$831.00. The administrative record reflects she reported wages of \$40.00 the week ending January 14, 2012, \$74.00 the week ending January 14, 2012, and \$200.00 the week ending January 28, 2012; totaling \$314.00. There were no other wages reported since January 1, 2012. The issue of whether wages were properly reported has not been determined and is remanded to the Investigations and Recovery for an investigation and determination.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

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 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The handwritten note had conflicting dates with the separation year and was not properly authenticated so is not considered credible. Since the separation information provided by the employer was otherwise based entirely upon hearsay evidence, claimant's testimony that work was not generally available due to a business slow down after the first of the year. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(27) provides:

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Because of being permanently laid off from work, claimant is obligated to make at least two in-person work searches during each week benefits are claimed and may not restrict herself to temporary or intermittent work while waiting to reapply for work.

**DECISION:**

The July 26, 2012 (reference 02) decision is modified without change in effect. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:**

The wage reporting issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs