

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARL A THOMPSON
Claimant

APPEAL NO. 11A-UI-04290-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**OC: 02/13/11
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 24, 2011, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 27, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Marlene Sartin participated in the hearing on behalf of the employer with witnesses Shana Young and Joe Piatt. Exhibits A and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer from June 3, 2010, to February 4, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer three hours before the start of their shift if they were not able to work as scheduled.

He started working as a restaurant server and later worked as a front desk clerk. After being transferred to a houseman position, the claimant complained to the general manager about not being able to work at the desk, but was told the houseman position was a good match for the claimant. This upset the claimant because the houseman position involved custodial and van driving duties, and the claimant has a college degree.

The claimant has asthma and the job duties of the houseman triggered a asthma attack in January 2011, for which he received treatment on January 12. The claimant provided a doctor's note restricting him from outside work to the employer, and the employer accommodated the restriction by moving him back to the server job.

The claimant was scheduled to work on February 8, 12, and 16. Prior to February 8, the food and beverage manager announced to the staff that they would be doing some deep cleaning on February 8. The claimant decided that the work would affect his asthma and so he did not report to work. He did not call in because he assumed the food and beverage manager would know he would not be reporting. This was an unwarranted assumption, as the doctor's note only restricted the claimant from working outside, and the food and beverage manager did not know why the claimant was not at work. The claimant was also absent from work without notice on February 12 and 16. He had no excuse for these absences or his failure to call in.

The claimant went into the restaurant on February 19. The food and beverage informed him that he had missed three days without notice and he would need to talk to the general manager about whether he had a job. When he talked to the general manager on February 24, he was informed that he was considered to have abandoned his job due to his no-call, no-shows.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I do not think the claimant intended to quit his employment when he was absent from work on February 8, 12, and 16. The employer, therefore, discharged the claimant due to his absences without notice.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's absences and violation of the work rule requiring notification if an employee is absent were willful and material breaches of the duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 24, 2011, reference 01, is modified with no change in the outcome. The claimant was discharged for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw