

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY J ROBERTSON
Claimant

APPEAL NO. 11A-UI-15731-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 10/30/11
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kinseth Hotel Corporation filed a timely appeal from a representative's decision dated November 29, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on January 10, 2012. Claimant participated. The employer participated by Ms. Jackie Nolan, Hearing Representative, and witness, Ms. Nancy Kelly, Regional Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Sherry Robertson was employed by Kinseth Hotel Corporation from June 1, 2011 when the employer purchased the facility where Ms. Robertson was employed until November 4, 2011 when she voluntarily left employment. Ms. Robertson worked as a full-time general manager at a Super 8 Motel facility and was paid by salary. Her immediate supervisor was Ms. Nancy Kelly, Regional Manager.

Ms. Robertson left her employment with Kinseth Hotel Corporation after providing two weeks' advance notice because of what she considered to be intolerable or detrimental working conditions.

In July of 2011, portions of the facility where Ms. Robertson was employed became infested with bed bugs. The claimant promptly notified the Kinseth Hotel Corporation of the problem and requested assistance. The employer chose to retain a different pest remedial service and the infestation of portions of the facility persisted.

Due to the infestation, Ms. Robertson received ongoing serious complaints from guests, staff and the matter was reported on more than one occasion to the health department by disgruntled clients. Despite repeated efforts on the part of Ms. Robertson through her liaison at the Kinseth

Hotel Corporation's management, the problem continued causing Ms. Robertson increased stress and anxiety.

At the time that the claimant tendered her resignation, she submitted a generic type resignation vowing to leave her employment on good terms with the employer. Claimant's immediate supervisor, Ms. Kelly, was aware of the infestation problem and the ongoing issues related to the inability of the remedial firm to end the infestation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code § 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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimant was not required to give notice of her intention to quit due to an intolerable, detrimental or unsafe working environment if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2000).

The evidence in the record establishes that the employer was well aware of the infestation at the work location where Ms. Robertson was assigned to work and aware of unsuccessful efforts that were repeatedly made to end the infestation. The employer was aware of the work-related issues that the bed bug infestation had caused the claimant. The employer thus had reasonable knowledge of the condition which caused the claimant to leave employment.

The administrative law judge finds that the claimant has sustained her burden of proof in establishing she left employment due to what she reasonably considered to be intolerable or detrimental working conditions under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 29, 2011, reference 01, is affirmed. Claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs