

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMAN W ATWOOD

Claimant

APPEAL NO: 10A-UI-04645-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION

Employer

OC: 02/21/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Norman W. Atwood (claimant) appealed a representative's March 18, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Kinseth Hotel Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2010. The claimant participated in the hearing. Larry Way of Employer's Unity, L.L.C. appeared on the employer's behalf and presented testimony from two witnesses, Dee McNamer and Tammy Hammel. During the hearing, Employer's Exhibits One and Two and Claimant's Exhibit A were entered into evidence. 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.

FINDINGS OF FACT:

The claimant started working for the employer on July 8, 2007. He worked full time (most recently 32 – 36 hours per week) as a dishwasher at the employer's Dubuque, Iowa hotel. His typical schedule was to work Tuesday through Saturday, normally starting a shift at 9:00 a.m. His last day of work was February 16, 2010.

On February 16 the claimant called Ms. Hammel, the kitchen manager, in the morning to say that he would not be in that morning as he was taking his girlfriend to Des Moines, but could come in when he got back to town in the afternoon, to which she agreed. He clocked in at 1:44 p.m. that afternoon, but then clocked out at 2:57 p.m. He did so because he thought there was no work needing to be done, but he did not obtain any management approval before leaving. As a result, he would have at least been written up when he returned for work. However, he did not seek to return to work until February 24. By that point, the employer deemed him to have voluntarily quit by job abandonment under the employer's three-day no-call/no-show policy, of which the claimant was on notice.

The claimant had been a no-call/no-show for scheduled work on February 19, February 20, and February 23. Additionally, he had also been a no-call/no-show on either February 17 or February 18, probably on February 17. The other of those days the claimant did call in the morning and told the morning cook he would not be in that day as he was going to the doctor

due to a tooth problem; he made no indication that day that his condition was serious enough that he might be gone for more than that day, nor did he recontact the employer that day after his supposed doctor's visit to inform the employer that the doctor had determined there was a problem serious enough that he needed to stay off work for a period of time. He testified that the tooth problem turned out to be an abscessed tooth.

The claimant provided one note from a doctor indicating he was excused from work from February 15 through February 22; this note was not dated February 17 or February 18, so it is unclear whether the claimant did in fact see a doctor that day. The claimant indicated he went back to the doctor and obtained the note on February 22; however, he did not recontact the employer when he was out that day to inform the employer that he was off work on a doctor's excuse. The doctor's note only covered the claimant through February 22. The claimant indicated he did not report for work on February 23 because he still was not feeling very well; however, he did not contact the employer as required under the employer's attendance policy to properly report he would be absent, possibly in part because of not having easy access to a telephone.

On the afternoon of February 24 he came in and sought to talk to his supervisor, Ms. Hammel, to give her his doctor's excuse and return to work. She was busy and unable to meet with him, and further at that point considered him to have quit by job abandonment, so ultimately did not meet with him. He then proceeded to file a claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for 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 24.25 provides that, 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. However, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. While he might have had a bona fide good reason for being absent those days, he did not properly report that to the employer in advance, nor did he have an excusable reason for failing to do so. A lack of adequate phone service is a matter of personal responsibility. The employer had no advance reason to understand or expect that the claimant might be missing work for an extended period. The employer reasonably concluded that the claimant had abandoned his position under its three-day no-call/no-show policy. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's March 18, 2010 decision (reference 01) is affirmed. The claimant effectively voluntarily left his employment without good cause attributable to the employer. As of February 23, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css