

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH ANN M LEPPERT
Claimant

APPEAL NO: 06A-UI-08309-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 07-23-06 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 11, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 5, 2006. The claimant did participate along with her witnesses Amy Dunwoody, Jean Tindell, Tammy Parker and Vanessa O'Hara. The employer participated through Brian Hutchins, General Manager, Deanna McNamer, Food and Beverage Director and Tammy Trowbridge, Kitchen Manager and was represented by Beverly Lamb of Talx Corporation. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?
Was the claimant overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a prep cook/chef part time beginning May 5, 2005 through July 20, 2006 when she voluntarily quit.

The claimant quit because she did not like her supervisor, Tammy Trowbridge or the way that Ms. Trowbridge supervised her. The claimant was upset because she perceived that when she asked Ms. Trowbridge questions Ms. Trowbridge was short or frustrated with her. The claimant was not comfortable with the pressure of the work and the gossip of her coworkers. On July 20 in the early afternoon the claimant put some biscuits or rolls in the oven to bake. She then either went to the restroom or downstairs to smoke a cigarette and when she returned Ms. Trowbridge was taking burned biscuits or rolls out of the oven. Ms. Trowbridge asked the claimant why she never set the time on the rolls and the claimant indicated that she believed she had. Ms. Trowbridge said that if she or any of the other workers had heard the timer go off, then they would have taken the rolls out of the oven and they would not have burned. Ms. Trowbridge then returned to her other duties. Approximately one-half hour later another worker came up to her and told her that the claimant had walked off the job and had written

“quit” on the time clock log. The claimant admits that she walked out and did write “quit” on the time clock log because she was angry that Ms. Trowbridge had accused her of not setting the timer for the rolls. The other employees working in the kitchen did not hear a timer go off when the rolls were done baking. Prior to quitting the claimant never complained about Ms. Trowbridge to upper management. Ms. Trowbridge had let the claimant live with her for three months when the claimant first began her employment because she did not have anywhere else to live. Continued work was available for the claimant had she not quit.

The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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(21), (22) 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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998). The claimant quit because she did not like working for Ms. Trowbridge. The claimant was unhappy that Ms. Trowbridge questioned her about setting the timer on the rolls. The claimant was also just not happy with the work environment. She never complained about Ms. Trowbridge prior to quitting. Ms. Trowbridge let the claimant live with her for over three months which convinces the administrative law judge she had no animosity toward the claimant. The claimant has not established good cause attributable to the employer for her quitting. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 11, 2006, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$816.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs