

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**PRISILA GUEVARA DECASQUEZ
1220 JERLYNN AVE
DES MOINES IA 50313**

APPEAL NO: 09A-UI-18377-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KINSETH HOTEL CORPORATION
c/o EMPLOYER'S UNITY LLC
PO BOX 487
ARVADA CO 80001-0487**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

**SPANISH COMMUNICATION SVCS LLC
6411 STANMORE CT
JOHNSTON IA 50131**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PRISILA GUEVARA DEVASQUEZ
Claimant

APPEAL NO: 09A-UI-18377-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 10-25-09
Claimant: Respondent (2R)

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 November 30, 2009, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 19, 2010 and continued February 25, 2010. The claimant participated in the hearing with Interpreter Patricia Vargas during the first part of the hearing and Interpreter Celia Huante during the second part of the hearing. Mike Heffling, General Manager and Jackie Nolan, Employer's Representative for the first part of the hearing and Greg Taschdjian, Employer's Representative for the second part of the hearing, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time housekeeping supervisor for Kinseth Hotel Corporation from October 26, 2000 to October 20, 2009. On October 1, 2009, the claimant became upset and angry and walked off her job, leaving her keys, and the employer believed she voluntarily quit her employment. On October 2, 2009, the claimant called and asked the employer for a leave of absence to go to El Salvador because her mother was ill. The employer consulted the corporate human resources department and stated there were several performance issues with the claimant but because she was "dealing with significant personal issues" it decided to allow her to apply for FMLA but to suspend her from October 1 through October 6, 2009, for walking off the job. The employer met with the claimant October 6, 2009, and gave her a written warning and a Document of Understanding regarding her performance. The claimant refused to sign either document and was "combative and argumentative" during their conversation about the warning and Document of Understanding. The employer told her because of her performance and behavior during the meeting it might move her to a different position. The

claimant took the FMLA paperwork and left and the employer did not expect to see her again until after her FMLA ran its course. On October 13, 2009, the claimant showed up at the hotel and said she was not going to El Salvador and wanted to work. The employer talked to human resources and met with the claimant October 20, 2009. The employer told the claimant her misrepresentation of her request for FMLA was the same as an unexcused absence and the claimant again became "combative" and refused to sign the warning. Because she had been a good employee overall the employer told her she could return to work as a room attendant/laundry person and the claimant became angry, said no, and left. The employer testified she would have been demoted regardless of the FMLA situation because of her reactions to the counseling sessions and her performance, especially in showing favoritism to one employee.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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. The claimant walked off the job because she was frustrated and angry October 1, 2009; became combative and argumentative and refused to sign the written warning the employer issued to her with the Document of Understanding October 6, 2009; showed up for work after not going to El Salvador and not notifying the employer she was not going October 13, 2009, and then refused the job she was offered. The employer could have gone with its first inclination that she quit October 1, 2009, when she walked off the job and turned in her keys but instead allowed her to return with a suspension, written warning and Document of Understanding, both of the latter which she refused to sign, and then allowed her to take FMLA at that time. The claimant let the employer believe she was in El Salvador until October 13, 2009, when she returned to the hotel and stated she wanted to come back to work, and then was combative and argumentative during the counseling session that followed. The employer could have terminated her employment for nearly every incident listed above, either for job abandonment or insubordination, but instead offered her a position as a room attendant/laundry person which the claimant refused. This could be construed as a disciplinary demotion or a rehire at a new position. Either way the claimant is not eligible for unemployment benefits as she walked off the job and was insubordinate and then refused the job assignment the employer made as part of a disciplinary demotion. Consequently, the claimant is not eligible for unemployment insurance benefits because she has failed to prove she had good cause for leaving her job and in the alternative the employer has shown disqualifying job misconduct. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The November 30, 2009, reference 02, 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css