

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY MEYERHOFF
Claimant

APPEAL 24A-UI-01290-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**OC: 12/31/23
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)A – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment
Iowa Admin Code R. 871-24.10

STATEMENT OF THE CASE:

The employer/appellant, Kinseth Hotel Corporation, filed an appeal from the January 22, 2024 (reference 01), unemployment insurance, decision that allowed benefits based upon her discharge from employment for no disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 22, 2024. Claimant, Ashley Meyerhoff, did not participate. Employer, Kinseth Hotel Corporation, participated through hearing representative, Anthony Scott and witnesses, Dalia Rubalcava, Amanda Riviera, and Lori Faught. No exhibits were offered or admitted.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

Was the claimant overpaid benefits?

Did the employer participate in the fact-finding process?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for this employer on September 8, 2023 as a part-time housekeeper. The claimant's immediate supervisor was Lori Faught. The claimant last worked for the employer on December 4, 2023. On December 6, 2023 the claimant's medical provider placed her on medical leave excusing her from work for the remainder of her pregnancy. The claimant has not provided a medical provider's documentation releasing her back to work as of the date of the hearing. The claimant has delivered her child and is able to return to work once the medical provider's documentation releasing her back to work is provided to the employer.

The claimant has received \$0.00 in regular state unemployment benefits since the filing effective date of December 31, 2023. The employer received the notice of fact-finding on January 19, 2024 for the fact-finding that occurred on January 17, 2024. The employer responded to the notice of fact-finding in writing on January 22, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is on a medical leave from work and has not separated from her employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

In this case, the evidence does not establish that the claimant has been discharged from employment. The employer establishes that it is holding the job for the claimant until she provides medical documentation releasing her to work after her pregnancy.

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.

Iowa Admin. Code r. 871-24.25 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

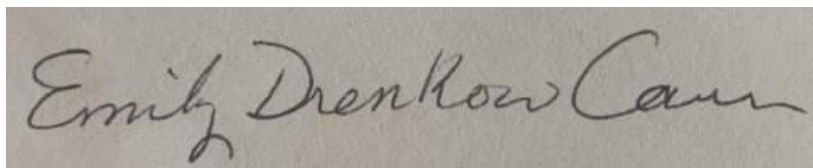
In this case, the evidence establishes that the claimant did not sever ties with her employer and never submitted a resignation notice. The employer is holding the position for the claimant open for when a medical provider releases the claimant back to work after her pregnancy. The claimant has not voluntarily quit.

The claimant remains employed with the employer but is on leave due to her medical provider taking her off work during her pregnancy. There is no separation from employment. Because the claimant has not separated from employment and work remains available for her at this employer, benefits are denied.

The claimant has not been paid any unemployment benefits since the filing effective date of December 31, 2023, so the issue of overpayment and chargeability do not need to be addressed.

DECISION:

The January 22, 2024, (reference 01) unemployment insurance decision is reversed. The claimant has not separated from this employer and remains on a medical leave due to her pregnancy. She may return to employment with this employer when she is able to provide a medical release allowing her back to work. Because the claimant has not separated from this employer, benefits are denied.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

February 27, 2024
Decision Dated and Mailed

ED/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly 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.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.

