

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA GURNEY
Claimant

APPEAL NO. 06A-UI-10584-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WISE MOTELS INC
Employer

**OC: 10-01-06 R: 01
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 October 24, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 14, 2006. The claimant participated in the hearing. Kathee McCrory, Manager, participated in the hearing on behalf of the employer.

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 part-time housekeeper from March 14, 2001 to October 2, 2006. On September 30, 2006, she had a discussion with Manager Kathee McCrory after the claimant told another employee that she only had a few more rooms to do because her customers did not want their sheets changed. Heather Hulsebus, Front Desk Clerk, overheard the conversation and called Ms. McCrory to inform her of what had been said. Ms. McCrory went to the room where the claimant was working and told her that the proper way to handle the situation was to ask the guest if he wanted services instead of just saying, "Do you want your sheets changed?" The claimant said they had always done it that way but agreed to follow Ms. McCrory's suggestion and the conversation ended at that time. Shortly thereafter, Ms. Hulsebus called Ms. McCrory at home again and said the claimant yelled at her about being a "tattletale" and used the "f-word" and the "a-word" in front of guests. The claimant admits to calling Ms. Hulsebus a bitch. Ms. McCrory returned to the motel once again and found the claimant working on a tub in a bathroom. Ms. McCrory told the claimant "we don't use that kind of language here" and the claimant jumped up and said she was "outta there" and began walking down the hall, using profanity and threw down her smock. She said, "It's been nothing but a bitch since you've been here and you can kiss my ass." Ms. McCrory asked the claimant if she was quitting on two separate occasions but the claimant did not answer her. The claimant

returned the next day and Ms. McCrory said the claimant voluntarily quit the previous day and she would have to leave. The claimant stated she wanted something in writing to that effect so Ms. McCrory went to the office and wrote a note recounting the situation. Ms. McCrory wrote the note because the claimant indicated she would not leave without one. The claimant followed her to the office area and swore at her in front of guests. The claimant had not received any previous warnings but did not like Ms. McCrory and felt as if she talked about employees behind their back. The claimant denies ever stating that she was voluntarily leaving her employment but testified she called the employer once she got home to say she was not leaving her job.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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 leaving of employment 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. A leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). A 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's behavior was unprofessional and it was not unreasonable for the employer to conclude she voluntarily quit her job when she twice failed to answer when asked if she was quitting. Additionally, the claimant left before the end of her shift, which indicates an intention on her part to voluntarily quit her job. While she did return the following day it appears that it was in order to get a letter regarding her separation. In Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992), a claimant walked off the job without permission before the end of his shift, saying he wanted a meeting with management the next day. The Supreme Court ruled that this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. In the case at hand, however, the employer was called to the motel twice September 30, 2006, because of the claimant's actions, and both times she responded inappropriately. She did not answer Ms. McCrory's inquiries asking if she was resigning her position but showed up the following day to get a letter clarifying her separation. The claimant was going to pick up a statement from the employer stating she was terminated and although the employer did not necessarily agree with the statement it provided one anyway. Consequently, the administrative law judge concludes the claimant voluntarily left her employment and has not demonstrated that her leaving was for good cause attributable to the employer. 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 October 24, 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 \$348.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/cs