

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LORI HOTT
PO BOX 28
207 – 1ST ST SW
FOSTORIA IA 51340**

**JAKO PROPERTIES INC
RAMADA LTD
2704 – 17TH ST
SPIRIT LAKE IA 51360**

**Appeal Number: 05A-UI-08111-BT
OC: 07/03/05 R: 01
Claimant: Respondent (2)**

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 the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Ramada (employer) appealed an unemployment insurance decision dated August 2, 2005, reference 01, which held that Lori Hott (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2005. The claimant participated in the hearing with Jason Mozena. The employer participated through owners Pat and Kim Janicek; Front Desk Clerk Kim Ahrenstorff; and employee Kelly Lindsay.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time front desk clerk from November 11, 2003 through July 5, 2005. She typically worked Mondays through Fridays, from 3:00 a.m. to 11:00 pm. On June 29, 2005, Kim Janicek, co-owner, told the claimant and another employee that the motel had been sold and the new owners would take over on July 5, 2005. Ms. Janicek reported there was no change for the employees and the new owners scheduled a meeting at 2:00 p.m. on July 5, 2005. The claimant was upset over the news and stated that she was putting in her two-week notice. She worked the next two days and was scheduled to work on July 4, 2005 but was a no-call/no-show.

The claimant arrived on the morning of July 5, 2005 to pick up her paycheck. When Ms. Janicek asked her where she was the day before, the claimant said, "I was too fucking drunk!" She also stated that she made a mistake and that people make mistakes. The claimant became very loud, disturbing several customers who were eating breakfast. Kim Ahrenstorff was wiping tables at that point and assured the customers that it was a staff matter and would be resolved quickly. The claimant again asked for her check and Ms. Janicek stated that she would get her check when she returned the Janicek's refrigerator that the claimant had borrowed. The claimant started pacing as she was talking louder. Pat Janicek told her to leave at least three times but she refused. Mr. Janicek finally called the police and it was not until the police were pulling into the parking lot that the claimant left. She called back and asked Ms. Janicek if she brought the fridge back, "Are you having Zander (her son) and myself fucking arrested?" Ms. Janicek told her to just bring the refrigerator.

The claimant had her boyfriend and another friend help her return the refrigerator and was given her check. The claimant then pulled her vehicle under the entrance canopy and gave a baby walker to Mr. Janicek, saying she never paid another employee for it, so she was giving it back. Mr. Janicek told her to give it directly to the employee and placed it back in the claimant's truck. The claimant then threw the baby walker out on the ground and left. The Janiceks and the new employer did not hear anything further from the claimant and she did not show up for the meeting with the new employer.

The claimant filed a claim for unemployment insurance benefits effective July 3, 2005 and has received benefits after the separation from employment in the amount of \$1,778.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The claimant contends she was fired but the evidence does not support her contention. The claimant testified the former employers with whom she had contact on July 5, 2005 fired her that day but these individuals were no longer the owners at that time and no longer had any authority to discharge the claimant. 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); An employee quits her job only if she intends to quit and carries out that intent by some overt act.

Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out when she gave her two-week notice to quit, was a no-call/no-show on her following scheduled workday and failed to show up for the new owners' employee meeting on July 5, 2005. The claimant contends she only said she was thinking about giving her two-week notice and did not put anything in writing but no writing is required and the evidence confirms she gave her notice as opposed to merely mentioning it. In conclusion, it is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her and she has not satisfied that burden. Iowa Code § 96.6-2. 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 unemployment insurance decision dated August 2, 2005, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 \$1,778.00.

sdb/pjs