

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOPKINS, JOHN, E**  
Claimant

**APPEAL NO. 12A-UI-05282-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**OC: 04/08/12**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 27, 2012, reference 01 decision that allowed benefits. After due notice was issued, a hearing was held on May 29, 2012. Claimant John Hopkins participated. Stephanie Van Dellen of Employers Unity represented the employer and presented testimony through Dan Barnes.

**ISSUE:**

Whether Mr. Hopkins separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates the Courtyard Marriott in Ankeny. Dan Barnes is the chef at the hotel's restaurant. Steve Peters is the hotel's general manager. John Hopkins began his employment in February 2011 and worked as a part-time line cook. Mr. Barnes was Mr. Hopkins' immediate supervisor. Mr. Hopkins last appeared in performed work for the employer on March 4, 2012. Mr. Hopkins was then absent from scheduled shifts on March 5, 6, 7, 8, 11, 12, 13, 14, 15, and 16.

The employer has a written attendance policy contained in an employee handbook. Mr. Hopkins received a copy of the handbook at the start of his employment. The policy required that Mr. Hopkins notify his immediate supervisor, Dan Barnes, or the manager on duty at least three hours prior to his scheduled start time if he needed to be absent from the employment. If Mr. Hopkins was unable to reach Mr. Barnes, the employer actually expected him to leave a message with the front desk of the hotel. The written policy indicated that the employer would assume an employee had voluntarily quit employment if they are absent from three consecutive scheduled shifts without notifying the employer. Mr. Hopkins was well aware of the attendance policy, including the call-in procedure and the no-call/no-show provision.

On March 5, Mr. Hopkins was scheduled to start work at 11:00 a.m. Sometime between 2:00 a.m. and 3:00 a.m., Mr. Hopkins left a message on Mr. Barnes' cell phone indicating that

his daughter was sick and that he would not be able to come to work. Mr. Barnes' daughter is 15 years old. Mr. Hopkins is a single-parent. Mr. Hopkins also contacted the night auditor to indicate he would be absent from the shift and the reason for the absence.

On March 6, Mr. Hopkins was scheduled to work at 11:00 a.m. Between 1:00 a.m. and 2:00 a.m., Mr. Hopkins telephoned Mr. Barnes' cell phone. Mr. Hopkins terminated the call as soon as Mr. Barnes answered. At about the same general time, Mr. Hopkins telephoned the front desk. Mr. Hopkins indicated that he would again be absent because his daughter was ill and he needed to care for her.

On March 7, Mr. Hopkins was scheduled to work at 7:00 a.m. At about 2:30 a.m., Mr. Hopkins left a message on Mr. Barnes' cell phone, indicating that his house was on fire and that he would be absent from work.

Mr. Hopkins had taken his daughter to the doctor on March 6 or 7 and had taken her back to the doctor on March 12. Mr. Hopkins did not think to provide the employer with any documentation concerning his need to take several days off from work.

On March 8, Mr. Hopkins was scheduled to work at 5:00 a.m. At 2:00 a.m., Mr. Hopkins notified the night auditor that his daughter was still sick and that he would be absent from work.

Mr. Hopkins was not scheduled to work on March 9 or 10. At some point on or before March 10, Mr. Barnes tried to reach Mr. Hopkins by telephone, but had to settle for leaving a message. Mr. Barnes was upset when he made the call. In his message, Mr. Barnes said, "What the hell is going on with you -- you need to fucking call me and talk to me."

On March 11, Mr. Hopkins was scheduled to work at 6:00 a.m. between 4:30 a.m. and 5:00 a.m. Mr. Barnes left a message on Mr. Hopkins' cell phone indicating that he expected it to be slow that morning, that he assumed Mr. Hopkins was sick, and that Mr. Hopkins could just take the day off. Mr. Hopkins had already called the night auditor at 2:30 a.m. to indicate that he would be absent because his daughter was still sick.

On March 12, Mr. Hopkins was scheduled to work at 5:00 a.m. At 3:00 a.m., Mr. Hopkins telephoned the night auditor and left a message said he would be absent because his daughter was still sick.

Mr. Hopkins was then absent from for additional shifts without notifying the employer. On March 13, Mr. Hopkins was scheduled to work at 11:00 a.m. On March 14, Mr. Hopkins was scheduled to work at 5:00 a.m. Mr. Hopkins had not checked the new posted schedule to see what hours he was scheduled on March 14 and beyond. On March 14, General Manager Steve Peters attempted to reach Mr. Hopkins by telephone, but had to leave a message. In the message, Mr. Peters told Mr. Hopkins that he would need to meet with Mr. Peters and Mr. Barnes before he returned to the employment. Mr. Peters did not say anything to indicate that Mr. Hopkins no longer needed to properly report his absences. On March 15, Mr. Hopkins was scheduled to work at 5:00 a.m. After a fourth no-call/no-show absence on March 16, the employer concluded that Mr. Hopkins had voluntarily quit and documented termination of the employment.

On March 19, Mr. Barnes commenced a period of vacation and was away from the workplace. On or about March 28, Mr. Hopkins contacted Mr. Peters to request a meeting to discuss his employment status. On March 28, Mr. Peters notified Mr. Barnes of the phone call from Mr. Hopkins. A meeting then occurred on March 30. At the meeting, Mr. Hopkins

acknowledged that he had messed up. Mr. Hopkins said that his daughter had been sick, that his house had been on fire, that he had been investigated for arson, and that he was sorry about not coming to work. Mr. Hopkins acknowledged that he had been absent from shifts without notifying the employer. The employer declined to reinstate Mr. Hopkins to the employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When an employee is absent from work for three consecutive workdays without notifying the employer in violation of the employer's policy, the employee is presumed to have voluntarily quit the employment without good cause attributable to the employer. See Iowa Admin. Code 871 IAC 24.25(4).

The weight of the evidence in the record establishes that the employment ended on March 16, when the employer concluded, under its written no-call/no-show policy, that Mr. Hopkins had voluntarily quit the employment. The evidence indicates that Mr. Hopkins was indeed a no-call/no-show for shifts on March 13, 14, 15, and 16. Under the employer's policy, and under the administrative rules cited above, Mr. Hopkins did in fact voluntarily quit the employment, without good cause attributable to the employer, effective March 15 or 16.

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.

Because Mr. Hopkins voluntarily quit the employment without good cause attributable to the employer, he is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Hopkins.

The outcome in this case would be the same if the administrative law judge had concluded that the employer had discharged Mr. Hopkins from the employment. That is because the evidence would still establish four consecutive absences without any notice to the employer. Each of these was an unexcused absence under the applicable law. See Iowa Code section 96.5(2)(a) and Iowa Admin. Code 871 IAC 24.32(7).

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be

required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's April 27, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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