

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA J SEITZ

Claimant

APPEAL NO: 13A-UI-04680-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION

Employer

OC: 03/24/13

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
871 IAC 26.14(7) – Late Call
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kinseth Hotel Corporation (employer) appealed a representative's April 9, 2013 decision (reference 02) that concluded Angela J. Seitz (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2013. The claimant failed to respond to the hearing notice by calling the Appeals Section to provide a telephone number at which she could be reached for the hearing; as a result she did not participate in the hearing. Jackie Nolan of Employer's Unity appeared on the employer's behalf and presented testimony from two witnesses, Ron Bernard and Erin Peavler. During the hearing, Employer's Exhibit One was entered into evidence. The record was closed at 2:23 p.m. At 2:33 p.m., the claimant called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened?

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the May 30, 2013 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant directly contacted the Appeals Section was on May 30, 2013, 33 minutes after the scheduled start time for the hearing. The claimant had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice. She had seen that one of the potential documents distributed in preparation of the hearing, the notes of the Claims

representative's fact-finding interview, contained her telephone number, and she assumed that the administrative law judge would call her at that same number even though she had not contacted the Appeals Section as instructed to confirm that she planned on participating in the hearing and to have her number entered into the Appeals Section conference call system.

The claimant started working for the employer on November 28, 2011. She worked part time (about 24 hours per week) as a housekeeper at the employer's Creston, Iowa hotel. Her last day of work was March 8, 2013. She did not return for scheduled shifts after that date.

The claimant typically worked either 3:00 p.m. to 11:00 p.m. shifts or 5:00 p.m. to 9:00 p.m. shifts. On a schedule that had been posted by about the third week of February 2013 the claimant was scheduled to work a 3:00 p.m. to 11:00 p.m. shift on March 11. However, she was a no-call/no-show for that shift. By another schedule that was posted on or by March 1 the claimant was again scheduled to work on March 13 from 3:00 p.m. At about 1:00 p.m. on March 13 the claimant called the head housekeeper, Peavler, and asked when she was next scheduled to work. Peavler responded that the claimant had been scheduled to work that evening, but that since the claimant had been a no-call/no-show for the shift on March 11 and Peavler was concerned that the claimant might not report for work on the 13th, she had already found someone to cover the claimant's shift that evening. The claimant denied knowing that she had been scheduled to work on the 11th. Peavler then told the claimant that she was next scheduled to work a 3:00 p.m. to 11:00 p.m. shift on March 15; the claimant responded "okay," and the conversation ended.

The shift on March 15 as well as 3:00 p.m. to 11:00 p.m. shifts on March 17 and March 20 were also on the schedule that had been posted by March 1. The claimant was a no-call/no-show for these further shifts. The employer therefore concluded that the claimant had voluntarily quit by job abandonment. Continued work had been available to the claimant had she not ceased reporting for work.

The claimant established a claim for unemployment insurance benefits effective March 24, 2013. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the May 30, 2013 hearing was after the hearing had been closed. Although the claimant might have intended to participate in the hearing, she failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's April 9, 2013 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 20, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css