

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER F STOUT**  
Claimant

**APPEAL NO. 09A-UI-16822-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**Original Claim: 10-11-09  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 28, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 14, 2009. The claimant did participate. The employer did participate through Jan Kleve, Housekeeping, and Lori Faught, General Manager, and was represented by Jackie Nolan of Employers Unity.

**ISSUE:**

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a housekeeper, full-time, beginning in February 2009 through September 25, 2009, when she voluntarily quit.

The claimant underwent a non-work-related surgical procedure on September 19. Prior to undergoing the procedure, she spoke to Ms. Faught and told her she was going to be gone on September 19 and 20 but would be able to come back to work September 21. The claimant returned to work on September 21, 22, 23, and 24. During each of those days, she had another employee assigned to help her work, despite the fact that she had no doctor's note indicating she needed any kind of help or accommodation in the form of work restrictions. On the morning of September 25 Ms. Kleve told the claimant that she would have to work alone and the claimant objected. Since the claimant had no doctor's note indicating she could not perform all of her job duties, she told Ms. Kleve she was leaving work to go to the doctor. The claimant did not return to work on September 25 with a doctor's note. On September 25 she spoke to Arlene Harnish, who she said told her that her name was taken off the schedule and that she had been fired. The claimant knew that Ms. Harnish did not have the authority to discharge her, as is evidenced by her September 28 call to Ms. Kleve. On September 28 the claimant called her supervisor, Ms. Kleve, and was told that due to low room sales she was not needed that day. On occasion when room sales were low, some of the housekeepers were sent home early or

called off work. Ms. Kleve never told the claimant she was discharged nor did she tell her that her employment had ended.

The claimant was on the work schedule for September 29 and October 1, 3 and 4. After September 28, the claimant was a no-call, no-show for her next scheduled shifts. Ms. Kleve did not have the authority to fire the claimant without Ms. Faught's permission. Ms. Kleve never asked Ms. Faught if she could discharge the claimant nor did Ms. Faught ever give Ms. Kleve permission to discharge the claimant. The claimant did not have a good working relationship with Ms. Kleve but was able to communicate effectively with Ms. Faught. The claimant never called Ms. Faught to ask if she was discharged. The claimant had been given the employer's handbook and policy book, which provides that any employee who is a three-day no-call, no-show for work will be considered a voluntary quit.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. The claimant was never told by anyone with the authority to discharge her that she was fired. Ms. Kleve merely told the claimant that she was not needed for work that day, not that her employment had ended. The claimant knew or should have known that Ms. Harnish had no authority to discharge her. The mere fact that the claimant called Ms. Kleve indicates that she knew Ms. Harnish could not discharge her. In the past, the claimant had demonstrated an ability to call Ms. Faught and speak with her. The claimant should have followed up with Ms. Faught after her September 28 telephone call to determine the status of her employment. The claimant was never told she was discharged. Under these circumstances, the claimant's failure to continue reporting to work was an abandonment of her job. Benefits are denied.

Iowa Code § 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.

871 IAC 24.25(4) 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 § 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 § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The October 28, 2009, reference 01, decision is affirmed. The claimant voluntarily left 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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