

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRITTNI M WRIGHT**  
Claimant

**APPEAL NO: 12A-UI-11047-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARKETLINK INC**  
Employer

**OC: 08/05/12**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

MarketLink, Inc. (employer) appealed a representative's September 11, 2012 decision (reference 05) that concluded Brittini M. Wright (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 October 5, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Amy McGregor appeared on the employer's behalf. 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.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on April 16, 2012. She worked full time as a telephone sales representative in the employer's telemarketing business. Her last day of work was July 25, 2012.

The claimant was not scheduled to work on July 26. The call center manager contacted the claimant on July 26 to inform her that while she could still come in and work on July 27 on her regular schedule, she would be switched to a different client program for which the claimant had already been cross-trained, and that as of July 31 her schedule would be adjusted for being on the new client program. The claimant had previously been informed that her schedule could be subject to change depending on the employer's business needs. The claimant agreed that she would come in on July 27 at least to discuss the details of the new client program. However, she did not come in at all on July 27. On July 30 she spoke with the call center manager and apologized for not coming in on July 27, and asked if she could come in that day and discuss the new client program; she was told she could. However, she did not come in or make further contact on July 30. She then was a no-call, no-show on and after July 31.

The claimant established a claim for unemployment insurance benefits effective August 5, 2012. The claimant has received unemployment insurance benefits after the separation.

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

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 September 11, 2012 decision (reference 05) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 31, 2012, 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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