

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASEY L EVERTS**

Claimant

**APPEAL NO. 10A-UI-14159-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AT&T MOBILITY SERVICES LLC**

Employer

**OC: 09/12/10**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Casey L. Everts (claimant) appealed a representative's October 6, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from AT&T Mobility Services, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2010. The claimant participated in the hearing. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Chelsea Birgin. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 17, 2007. Since about June 2008, he worked full-time as assistant store manager in the employer's Coralville, Iowa store. His last day of work was September 10, 2010. He had submitted a two-week notice of resignation on August 27. His stated reason for quitting related to some modifications to his job duties since appointment of a new store manager, Ms. Birgin, after the claimant had been acting store manager for several months. Those modifications included no longer being responsible for making the employee schedules and only sharing responsibilities regarding inventory and employee coaching, rather than being solely responsible.

His unstated reason for quitting was that he believed that if he had not quit, he would have been discharged. The employer had been investigating a concern regarding a potential conflict of interest on the part of the claimant and two sales consultants who had been creating a website for services that potentially crossed into the employer's area of service. The claimant had been interviewed in the investigation in about late June 2010. Shortly after his interview, outside of

work, the sales consultants inquired of him regarding the interview process and asked for advice on what to say in the interview, and he did give them some advice. As the investigation continued, in July an employer interviewer spoke to at least one of the consultants and understood that the claimant had advised the consultant to say that the consultant did not recall if asked about some details. The claimant then learned that the employer was investigating whether he had inappropriately provided advice to the consultants.

On about August 25, at the claimant's request, he had a private, "off the record" discussion with the employer's area manager, who was subordinate to the employer's manager who was in charge of the investigation and would be making the ultimate disciplinary decision. The area manager shared his opinion with the claimant that if the claimant had given advice to the consultants regarding what to say or do in their investigative interviews, he would be fired. The claimant never officially participated in an investigative interview on the issue of what advice he had given, and he was never directly told that a decision had been made to discharge him if he did not quit. Believing that outcome was inevitable, the claimant submitted his resignation.

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

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not "voluntary," as he had not desired to end the employment; he argues that if he had officially confirmed the advice he had given to the consultants, he would have been discharged, so that it was the employer that led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). 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. The rule further provides that there are some actions by an employee which are construed as being a voluntary quit of the employment, such as where an employee quits because of a belief he will be discharged but the employer had not arrived at that determination and so officially advised the employee that he would be discharged unless he quit. 871 IAC 24.25.

The claimant quit because he believed he would be discharged, even though there was no official determination that he was in fact to be discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

**DECISION:**

The representative's October 6, 2010 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of September 10, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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