

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOVA B CLUTS

Claimant

APPEAL NO. 07A-UI-01430-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC

Employer

**OC: 01-07-07 R: 03
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Nova B. Cluts filed a timely appeal from an unemployment insurance decision dated January 30, 2007, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held February 26, 2007 with Ms. Cluts participating. Center Manager Dave Coveney and Program Manager Katie Murph participated for the employer, Access Direct Telemarketing, Inc. which was represented by Alyce Smolsky of Johnson & Associates. Exhibit D-1 was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her work?

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nova B. Cluts was employed by Access Direct Telemarketing, Inc. from July 3, 2006 until approximately January 9, 2007.

Through a misunderstanding, Ms. Cluts was absent from work from December 28, 2006 through January 4, 2007. Ms. Cluts believed that her request for vacation had been approved. Although it had not, the employer did not hold these absences against Ms. Cluts. On January 3, 2007, Program Manager Katie Murph, the claimant's supervisor, left a message for her to call the company. When Ms. Cluts returned the call she spoke to Center Manager Dave Coveney. Ms. Cluts and Mr. Coveney agreed that she would return to work on January 7, 2007. Ms. Cluts did not do so and did not contact the employer. She was also absent without contact on January 8 and January 9, 2007. Ms. Cluts had received a copy of a company policy providing that three days of absence without contact would be considered a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The first step when analyzing this evidence is to characterize the separation. The claimant contended that she was discharged for her absences prior to January 3, 2007 and the employer contended that the claimant quit due to her absences without contact.

871 IAC 24.25(4) provides that an individual who is absent for three days without contact in violation of a company rule is presumed to have left work voluntarily. The evidence in this record establishes that the employment came to an end under these circumstances. The separation is better characterized a quit.

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.

The evidence persuades the administrative law judge that Ms. Cluts knew that the employment relationship was intact when she spoke to Mr. Coveney on January 3, 2007. She has not established a sufficient reason for being absent on January 7, 8, and 9, 2007. From this the administrative law judge concludes that the separation was a quit without good cause attributable to the employer. Benefits are withheld.

DECISION:

The unemployment insurance decision dated January 30, 2007, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw