

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHANTEL DAVIS

Claimant

APPEAL NO: 06A-UI-10065-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT HALF CORP

Employer

**OC: 09/10/06 R: 02
Claimant: Respondent (2/R)**

Section 96.6-2 – Timeliness of Protest
Section 96.5-1 – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-Time Employment
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Robert Half Corporation (employer) appealed an unemployment insurance decision dated October 4, 2006, reference 04, which held that Chantel Davis (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2006. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Sharon Martin, Unemployment Coordinator and Deborah Van Der Molen, Division Director. Exhibit D-1 was admitted 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:

The issue is whether the employer's protest was timely and whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on September 18, 2006 with a due date of September 28, 2006. The employer filed its protest on September 28, 2006.

The employer is a temporary employment agency. The claimant was employed as a part-time telemarketer from January 9, 2006 through May 4, 2006. She was counseled due to attendance and the claimant reported she had to quit due to not having a ride. The company to whom she had been assigned told her to take some time to find transportation and return to work on May 4, 2006 if she was successful. The claimant called the company and reported she would

not be returning because she had no transportation. She quit her employment with the employer at that time.

The claimant filed a claim for unemployment insurance benefits effective September 10, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The employer received the original notice of claim and filed its protest in a timely manner. The next issue to be determined is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling the employer she could not work because she had no transportation. The claimant's separation from employment was not with good cause attributable to the employer.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or her maximum weekly benefit amount.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be

credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated October 4, 2006, reference 04, is reversed. The employer submitted a timely protest. The claimant voluntarily quit her part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged and the claimant is overpaid benefits in the amount of \$1,407.00.

This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what her maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs