

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

LYLE M POYNER  
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COUNCIL BLUFFS IA 51503

PINNACLE TELEMARKETING LTD  
ATTN: KATHI WRIGHT  
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PLAINVIEW NE 68769

Appeal Number: 05A-UI-12187-DT  
OC: 10/30/05 R: 01  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Lyle M. Poyner (claimant) appealed a representative's November 30, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Pinnacle Telemarketing, Ltd. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2005. The claimant participated in the hearing. Kathi Wright appeared on the employer's behalf and presented testimony from one other witness, Brian Haxton. 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 November 3, 2003. He worked part time as a telephone sales representative in the employer's Council Bluffs, Iowa, call center. His last day of work was September 12, 2005.

Until approximately August 15, 2005, the claimant worked a 9:00 a.m.-to-3:00 p.m., Monday-through-Friday shift. Beginning in late July or early August, the employer began to reduce the claimant's hours due to a loss of some business clients. After August 15, the claimant would check with the employer regularly to see if there was work for him, but was told there was not. He continued to check in periodically, and shortly before September 12, 2005, he was told he could return to work on another project on a 4:00 p.m. to 8:00 p.m. schedule. He returned to work that day, but on September 13, 2005, he was told there was no work. Again on September 14 he checked for work but was told that the employer needed to rewrite the sales script for the project. He continued to check in periodically for work thereafter, but was told there was none available. On September 24, 2005, when he sought to obtain his paycheck, the employer required him to sign a separation notice in order to receive his check.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily 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.

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 accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The employer asserted that the claimant was not discharged but that he voluntarily quit by abandoning his position. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code section 96.6-2. As the separation was not a voluntary quit, it must be treated as a layoff or discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without

prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The separation here was attributable to a lack of work by the employer. The claimant was laid off for lack of work. Benefits are allowed.

DECISION:

The representative's November 30, 2005 decision (reference 02) is reversed. The claimant did not voluntarily quit. Rather, he was laid off due to a lack of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kjw