

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

KARLA C JUDGE
109 N 1ST AVE
MARSHALLTOWN IA 50158

ACCESS DIRECT TELEMARKETING INC
c/o TALX U C EXPRESS
F/K/A JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-04072-DT
OC: 03/07/04 R: 02
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (employer) appealed a representative's April 1, 2004 decision (reference 01) that concluded Karla C. Judge (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 May 6, 2004. The claimant participated in the hearing. Suzanna Ettrich of TALX UC Express, formerly known as Johnston & Associates, appeared on the employer's behalf and presented testimony from three witnesses, Sara Sheehy, Nate Bradbury, and Becky Thomas. 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: 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 28, 2003. She worked full time as a telephone sales representative in the employer's Marshalltown, Iowa telemarketing center. Her last day of work was February 16, 2004.

The claimant had been having difficulties with a male supervisor. During the week of February 2, the claimant spoke to the center manager, Ms. Sheehy alleging that the supervisor had been verbally sexually harassing her. Ms. Sheehy indicated she knew how the supervisor was. The claimant was being moved into another supervisor's area the next day, so the employer did not take any immediate action to further separate the two employees.

The claimant was upset that the employer had not taken stronger action immediately. She still had passing contact with the male supervisor. On February 17, she contacted the employer and indicated that she was not going to return to work while the supervisor was still there. She contacted the corporate human resources office and reported her complaints regarding the supervisor, adding that there had been a situation in January where the supervisor had physically pushed her into a wall in the break room. Ms. Thomas from that office spoke to the claimant on February 18 and told her the employer was taking her allegations seriously and wanted to resolve matters so she could return. The employer considered the claimant on an informal leave of absence status while the matter was investigated. On February 19, Ms. Thomas recontacted the claimant and informed her that the supervisor was going to be removed from the company. His last day at the center was February 20. He took paid leave February 21, February 23, and February 24, but was informed on February 23 that he was being removed from employment. On February 23, Ms. Sheehy also spoke to the claimant and informed her that the supervisor was no longer with the company and asked her to return to work. The claimant declined, at least in part because she did not believe she had been taken seriously until she contacted the corporate office and did not believe Ms. Sheehy had taken appropriate and prompt action earlier in February.

The claimant established a claim for unemployment insurance benefits effective March 7, 2004. The claimant has received no unemployment insurance benefits since the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). 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 Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). While the claimant's work situation was perhaps not ideal, she has not provided sufficient evidence to conclude that upon the removal of the supervisor, a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Further, in order for a reason for a quit to be attributable to the employer, an individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Here the claimant did provide this notice and opportunity to the employer, and the employer responded by removing the male supervisor from his employment, even if it took between two to three weeks from the first time the claimant addressed the matter with the employer. Even if the situation had previously been intolerable, the employer took reasonably prompt action to remove the primary problem, and thus the potentially intolerable condition. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's April 1, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 23, 2004, 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.

ld/kjf