

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY R BRIGHT
Claimant

APPEAL NO. 10A-UI-16818-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PHOENIX MARKETING SERVICES
Employer

OC: 08/08/10
Claimant: Respondent (1-R)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 6, 2010 (reference 03) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on January 27, 2011. Claimant participated with Christopher M. Bright and was represented by Ben Humphrey, Attorney at Law. Employer participated through Vice President Christin (Chris) Myers and was represented by Alice Steuterman and Doug Fulton, Attorneys at Law. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a customer service representative from August 1, 2010 and was separated from employment on August 9, 2010. Myers and president, Theresa "Teri" Kruse, held the same offices in the Iowa corporation; Heartland Incorporated, doing business as Heartland Marketing (Heartland). Because of an Assurance of Voluntary Compliance agreement with the Iowa Attorney General (Claimant's Exhibit A), the business assets were transferred from Heartland Marketing to Phoenix Marketing Services (Phoenix), a Missouri corporation, and Heartland ceased business operations in Iowa as of July 31, 2010. Claimant was not aware of the reasons for the move to Missouri or that Kruse and Myer considered her an employee of Phoenix until after the separation but had agreed to work in Missouri to help set up an office in St. Joseph and complete any Heartland business (sales and collections) remaining from the Iowa operation. Claimant did not intend to commute or relocate. There was no agreement that the work in Missouri was permanent or that the employment would be conditioned upon relocation or commute. Only after claimant told the employer she was unwilling to relocate to Missouri did Kruse and Myers demand signatures on tax withholding documents and a non-compete agreement for Phoenix, and return of Heartland-provided cell phones, in exchange for a final paycheck.

Claimant and her spouse entered into self-employment and opened a telemarketing business after leaving the Heartland/Phoenix employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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 24.26(23) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

The employer's misrepresentation or withholding of information affecting the claimant's employment involving the negotiations or agreement with the Iowa Attorney General and the cessation of business operations by Heartland in Iowa giving rise to Phoenix's business operations in Missouri, claimant's belief the work in Missouri was on a temporary or limited basis, and claimant not wanting to relocate or commute on a permanent basis when that was not a part of the terms of hire, were good-cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The December 6, 2010 (reference 03) decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The claimant's availability issue related to entering self-employment and whether the separation from Heartland Incorporated (account number 330403) was the result of a business closure are remanded to the claims section of Iowa Workforce Development for initial investigations and determinations. Include notice to the parties **and their attorneys** as set forth in this decision and **use the mailing address for Phoenix to contact the employer Heartland unless the employer's attorney otherwise directs**, as the officers for Phoenix are the same as for Heartland and it is not clear that the Iowa post office box for Heartland is still in use.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw