

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRICIA R RAWSON
Claimant

APPEAL NO: 12A-UI-11061-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 08/12/12

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Marketlink, Inc. (employer) appealed a representative's September 12, 2012 decision (reference 01) that concluded Tricia R. Rawson (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 17, 2012. The claimant participated in the hearing. Amy McGregor appeared on the employer's behalf and presented testimony from one other witness, David Munoz. 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 March 26, 2012. She worked full time as a sales supervisor in the employer's Indianola, Iowa, telemarketing center. Her last day of work was August 13.

The claimant had been on a medical leave of absence from June 12 through August 12, when the leave expired. She returned to work on August 13, but was not able to complete her shift, as she became ill and had to leave work early. Before she left, the site manager, Munoz, indicated that she "would be in trouble" because she did not have any remaining PTO (paid time off).

Earlier in the day on August 13, the claimant had a meeting with McGregor, the human resources manager. McGregor had indicated to the claimant that if she missed more work, she would be getting a formal warning.

On August 14 the claimant was scheduled to be at work at 10:30 a.m. She spoke with McGregor at about 9:30 a.m. and indicated that she was still ill and would be absent; she did not inquire as to what would happen because of her absence that day or because of her leaving work early the prior day. At about 10:30 a.m., she sent Munoz a text message in which she indicated that she would be back at work on August 16.

The claimant was a no-call, no-show for work on August 16, August 17, and August 20. The employer considered the claimant to have voluntarily quit by job abandonment under its three-day no-call, no-show policy, of which the claimant was on notice. The employer's conclusion that the claimant had quit was further bolstered by the fact that the claimant had indicated to McGregor that she was actively seeking other employment. On August 23 the employer sent the claimant a letter indicating its understanding that the claimant had voluntarily quit by job abandonment and asking that she return her facility key. The claimant did respond by returning the key, but she did not make any indication that she had not intended to quit.

At the hearing, the claimant indicated that she had not reported for work on and after August 16 because she believed that she had been discharged because of leaving work early on August 13 and being absent on August 14 and August 15. The employer had never told her that she was discharged or would be discharged if she returned to work; the employer's intent was to give her the formal warning at whatever point the claimant did return to work. The employer had not made any determination to discharge the claimant, because the claimant had never been given the formal warning, which is a normal step prior to discharge.

The claimant established a claim for unemployment insurance benefits effective August 12, 2012. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee—where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer—where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary,” as she had not desired to end the employment; she argues that it was the employer's action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee ceases reporting for work because of a belief that she has been or will be discharged but where the employer has not indicated to the employee that she, in fact, has been or will be discharged. 871 IAC 24.25(33). A three-day no-call, no-show in violation of company rule is also considered to be a voluntary quit. 871 IAC 24.25(4).

The claimant ceased reporting for work and was a three-day no-call, no-show after indicating that she would return to work, even though the employer had not made any indication of

pending action other than that she would be given a formal warning; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

The separation is deemed to have occurred on August 20, 2012, the third day of the no-call, no-show; the claimant established her claim for benefits effective August 12, 2012. An issue as to whether the claimant was able and available for work during that week arose as a consequence of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's September 12, 2012 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of August 20, 2012, 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. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue. The matter is further remanded to the Claims Section for investigation and determination of the able and available issue for the week of August 12.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw