

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANITA M DORR
Claimant

APPEAL NO. 09A-UI-18504-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST DIRECT OF IOWA INC
Employer

OC: 11/08/09
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated December 3, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 20, 2010. Claimant participated. Employer participated by Tanya Rote, controller. The record consists of the testimony of Tanita Dorr and the testimony of Tanya Rote.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a telemarketing company. The claimant initially began as a part-time employee in February 2007 and became a full-time employee sometime in 2008. The claimant quit her job on October 22, 2009.

The claimant was hired as a telemarketer and “worked the phones.” Approximately six or seven months prior to her resignation, she was also given some responsibilities for monitoring a campaign. While she was doing this monitoring, she was “off the phones.” She would assist other employees and help improve their skills. This change in her job duties was not a promotion and she was not paid extra for this work. Since the monitoring was part time, the claimant was still doing phone work when she was not doing the monitoring.

The claimant approached Tim Rote, one of the owners, and asked about the possibility of becoming a supervisor. Mr. Rote told the claimant that her attendance had to improve and that he did not need a supervisor at that time. The claimant was under the impression that she had been promoted when she was asked to monitor the campaign and felt that she was demoted when her monitoring responsibilities ended. The claimant’s pay was not increased when she

did the monitoring nor did it decrease when those responsibilities ended. The claimant did not want to work the phones. She told her employer that she wanted a job where she could move up.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case established that it was the claimant who initiated the separation of employment. She was hired as a telemarketer. At some point she was given some monitoring responsibilities for a period of several months and those responsibilities were then taken away. The claimant was never promoted to a supervisory position and there was no change in pay. After the monitoring tasks ended the claimant went back to full-time duty on the phones. The claimant did not want to work the phones and felt that she had been demoted. The employer informed her that there were no supervisory positions open at that time and that her previous poor attendance was a factor against her becoming a supervisor.

The representative concluded that the claimant quit work because of a change in the contract under which the claimant had been hired. There is no evidence that the claimant's contract of hire was changed. Her duties changed for a period of several months, but she was hired as a telemarketer and remained in that job during the entire tenure of her employment. The claimant no longer wanted to work as a telemarketer and did not feel that she could be promoted, which is what she wanted. Although the claimant may have had good personal reasons for quitting her job, these reasons are not good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits. Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for a determination of the overpayment issue.

DECISION:

The decision of the representative dated December 3, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to the claims section for determination of the overpayment issue.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs