

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARVIN INGRAM**

Claimant

**APPEAL NO. 07A-UI-07581-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESS DIRECT TELEMARKETING INC**

Employer

**OC: 07-08-07 R: 02  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.4-3 – Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 27, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 22, 2007. The claimant did participate. The employer did participate through Danielle Milligan, Administrative Assistant Jason Eischeid, Operation Manager, Matt Kaluza, Shift Manager and was represented by Jennifer Coe of Johnson & Associates.

**ISSUE:**

Did the claimant file a timely appeal?

Did the claimant voluntarily quit his job without good cause attributable to the employer when he failed to make a timely return to work from a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a telephone service representative full time beginning October 1, 2006 through February 26, 2007 when he voluntarily quit by failing to return to work after the expiration of his leave of absence.

The claimant was in a car accident on his way to work on January 13, 2007. He contacted the employer shortly thereafter to inform them that he would not be into work. The claimant then filled out a request for a leave of absence on January 18 that was dated to begin on January 13, 2007. He believed that his leave of absence would last for six weeks. If the claimant's leave had lasted for six weeks, he would have been due back to work on February 26, 2007. Between the time the claimant last worked on January 12 and the third or fourth week of April, he did not contact the employer to keep them informed of his medical status. There are no medical records that indicate the claimant was to be off work for six weeks.

The claimant contacted Danielle Milligan during the third or fourth week of April to inquire about his job status. At that time Ms. Milligan told the claimant he needed to speak to Jason Eischied

because the employer had considered him a voluntary quit when he did not return from his approved leave on February 26, 2007.

The claimant was obligated to inquire as to how long his leave of absence was approved. The claimant testified he thought he had six weeks at one point and at another point he thought he had 90 days. If the claimant had 90 days then he was due back to work on April 16, 2007. The claimant did not inquire from the employer until both the six weeks deadline and the 90-day deadline had each expired.

The claimant's testimony that he was released to return to work in the middle of March also indicates that it was his responsibility to contact the employer and to tell them he wanted to return to work, or at the very least to show up and offer to return to work. The claimant does not recall when he contacted the employer. Ms. Milligan's testimony that she recalled talking to the claimant in the third or fourth week of April because she had started a new position is credible. When Ms. Milligan spoke to the claimant in late April, his separation had already been processed, indicating that the claimant did not call the employer on April 5. Ms. Milligan testified she would have recalled if the claimant called on April 5, because that was her first full day in her new position and she would have recalled if she spoke to the claimant on her first day in a new job.

Jason Eischied did not speak to the claimant to tell him that he was a voluntary quit for failure to return from a leave of absence until late April after the claimant had spoken to Ms. Milligan. The claimant was told by Mr. Eischied in late April 2007 that he could reapply for his job. The claimant reapplied on June 6, 2007. He was hired to begin in July, but pushed his start date back so he could take his daughter to college.

The claimant received the fact-finding decision denying his benefits on July 30 and went to his local office to fax in an appeal. The claimant faxed the appeal on July 30 but did not realize the fax was not received by the appeals section. The claimant filed his appeal on July 30, 2007 but it was not received due to a faulty fax transmission.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant

to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did file a timely appeal of the fact-finder's decision but the decision was not received due to a faulty fax transmission. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant failed to timely return to work after a granted leave of absence. The administrative law judge concludes he did voluntarily quit by failing to return in a timely manner from his leave of absence.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The claimant requested and was given a leave of absence to be gone for six weeks. Even if the administrative law judge were to consider that the claimant was allowed to be gone for 90 days, he was due to return back to work by April 16, 2007. The claimant did not even contact the employer until the third or fourth week of April after he should have returned to work. The claimant was obligated to know when his leave expired, particularly in light of his testimony that his doctor released him to return to work in March 2007. The claimant failed to return to work when his leave expired, whether it was for six weeks or 90 days, thus he is considered to have voluntarily quit his employment without good cause attributable to the employer. Accordingly, benefits are denied.

**DECISION:**

The July 27, 2007, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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