

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA LEFFLER

Claimant

APPEAL NO: 07A-UI-01688-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC

Employer

**OC: 01-14-07 R: 04
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 12, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 5, 2007. The claimant participated in the hearing. Renee Harmon, Program Director; Randy Gerhardt, licensed insurance agent/backup trainer; and Aylce Smolsky, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time insurance agent for Access Direct Telemarketing from November 6, 2006 to January 16, 2007. On January 16, 2007, the employer presented the claimant with a coaching and counseling form because she "put through a cancelled application that went to underwriting. This call was sent back to us due to issues with the policy. The customer stated that they didn't want the coverage. This is a huge issue for the client and company. Donna must disposition all calls correctly. Further issues will result in further disciplinary action and possible removal from Gerber" (Employer's Exhibit Two). The claimant did not agree with the warning and refused to sign the form which states, "The signatures below indicate that the above information was discussed with the Team Member on the date stated" (Employer's Exhibit Two). She continued to tell the employer she did not believe she did what was stated on the warning and did not want to sign it. Program Manager Renee Harmon eventually told the claimant she was "wasting (her) time" and asked, "Are you going to sign it or not" which the claimant believed was an ultimatum that if she did not sign the warning her employment would be terminated although Ms. Harmon never said that. The claimant did not provide any comments in the employee comment section of the form. The claimant finally stated she would not sign the form and said she thought it would be best if she ended her

employment so Ms. Harmon retrieved an Employee Separation Form which the claimant signed with the statement, "I was asked to sign a paper I did not agree with – thought there was a 2 way conversation but was given the ultimatum" (Employer's Exhibit One). The claimant's personal items were gathered and she left the building, ending her employment. The employer did not intend to terminate her employment and had continued work available for her had she not left.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without 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(28) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant disagreed with the warning, it appears she made an error and was being coached and counseled about that error. The employer spent nearly an hour going over the situation with her before asking if she was going to sign the form "or what" and the claimant interpreted that as an ultimatum to either sign the form or she would be fired. The employer denies any intention to terminate her employment that day. An impartial reading of the situation leads to a conclusion different than that of the claimant. The claimant had ample opportunity to write comments on the coaching and counseling form but chose not to and refused to sign the form at all. The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. Green v. IDJS, 299 N.W. 2d 651 (Iowa 1980). The claimant was not told she would be terminated if she did not sign the form but

the employer did finally become exasperated with her and asked if she was going to "sign it or what?" That does not appear to be an ultimatum. Instead it appears the claimant chose to quit because she was dissatisfied with the work environment and the employer's rules and disciplinary procedures. Consequently, the administrative law judge concludes the claimant voluntarily left her employment and has not demonstrated that her leaving was for good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 12, 2007, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,730.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs