

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA S ROSS

Claimant

APPEAL NO. 07A-UI-03830-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC

Employer

**OC: 03/18/07 R: 04
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Samantha S. Ross (claimant) appealed a representative's April 10, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Access Direct Telemarketing, Inc., would not be charged because the claimant quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2007. The claimant participated in the hearing. Alyce Smolsky, a representative with TALX, appeared on the employer's behalf. Rebecca Schwertferger testified on the claimant's behalf. 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:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 11, 2006. The claimant worked as a full-time in-bound customer service representative.

During her employment, the claimant reported the use of drugs by other employees. The claimant also reported problems she had with two employees. One employee overheard the two employees plot to move the claimant's desk next to one of them so the claimant would quit. The claimant completed paperwork documenting the problems she had with the two employees and gave them to a trainer. Both the trainer and her former supervisor, K.L., indicated the human resource department would talk to her about these concerns. No one in human resources talked to the claimant. Whenever the claimant asked if someone from human resources was going to talk to her, she was assured they would. Schwertferger had no knowledge of any written documentation the claimant provided to the employer about problems she had at work or with some employees.

On March 20, one of the employees who created problems for the claimant was made a supervisor-in-training. The claimant's supervisor, K.L., was transferred to another area. On March 23, the new supervisor-in-training gave the claimant a final written warning for making a mistake in on data entry. The claimant entered the wrong state. When the claimant received the March 23 final written warning, she concluded the employer, supervisor-in-training, was retaliating against her complaining about her and the employer would do nothing about the drug and harassment issues the claimant had reported more than a month earlier. On March 23, the claimant informed the employer she was quitting effective immediately.

The employer is not one of the claimant's base period employers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-2-a. Since the claimant quit her employment, she has the burden to establish she quit for reasons that qualify her to receive unemployment insurance benefits. Iowa Code § 96.6-2.

The law presumes a claimant quit without good cause when she quits after being reprimanded. 871 IAC 24.25(28). The law also presumes a claimant quits with good cause if she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4).

If the claimant had not complained about the conduct of some employees prior to March 23, this case would be simple because the claimant quit after the employer gave her a final written warning. Under that factual situation, she would not be qualified to receive benefits.

This case also would be easier if the claimant had requested the presence of her former supervisor or the trainer to verify she gave the employer written documentation about the problems she had with some employees. Since these people did not participate in the hearing, the case revolves around the claimant's credibility. The claimant gave detailed information about a number of issues concerning drug use at work and how two employees harassed her. Since the employer had knowledge about these allegations as the result of a fact-finding interview, the employer could also have had witnesses to rebut the claimant's allegations. Instead, the employer's stance was that no written documentation was ever received by the human resource department. Even though the human resource department did not receive the claimant's written documentation about other employees harassing the claimant or the drug use at work does not mean the claimant did not complete the written documentation. The claimant's detailed testimony is deemed credible. Therefore, a preponderance of the evidence establishes that the claimant voluntarily quit her employment because employees harassed her and the employer failed to take reasonable steps to correct the problem. The claimant is qualified to receive unemployment insurance benefits.

The employer's account will not be charged during the claimant's current benefit year because the employer is not one of the claimant's base period employers.

DECISION:

The representative's April 10, 2007 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits.

As of March 18, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css