

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE HAMILTON

Claimant

APPEAL NO. 06A-UI-10956-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC

Employer

**OC: 10/08/06 R: 04
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (employer) appealed an unemployment insurance decision dated November 1, 2006, reference 01, which held that Julie Hamilton (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2006. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through Renee Harmon, Program Manager; Miranda Smith, Telemarketing Representative; and Lynn Corbeil, Employer Representative. Employer's Exhibit One was admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time telemarketing representative from March 21, 2005 through September 27, 2006. She was considered to have voluntarily quit her employment after she was a no-call/no-show for three consecutive workdays ending September 27, 2006. At the time of hire, the claimant acknowledged that she may be asked to change shifts based on client needs. She was hired for the shift of 1:00 p.m. to 9:30 p.m., Mondays through Thursdays and from 9:00 a.m. to 5:00 p.m. on Saturdays. She was most recently working from 7:30 a.m. to 4:00 p.m., Mondays through Fridays but was going to be changed to 11:30 a.m. to 8:00 p.m., Mondays through Fridays. When the claimant was notified on September 22, 2006, she said she was putting in her two-week notice but never called or reported to work after that date.

The claimant filed a claim for unemployment insurance benefits effective October 8, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out when she failed to call or report to work for three consecutive days. She quit her employment because the employer was changing her schedule. At the time of hire, she acknowledged in writing that she could be asked to change shifts based on client needs.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 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 unemployment insurance decision dated November 1, 2006, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until she has worked in and has 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 \$826.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css