

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER A AHLF**  
Claimant

**APPEAL NO. 13A-UI-13377-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACOSTA INC**  
Employer

**OC: 10/27/13**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Acosta, Inc. filed a timely appeal from a representative's decision dated November 26, 2013, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 26, 2013. Claimant participated. The employer participated by Ms. Cathy Boudreaux, Hearing Representative, and witness, Ms. Michelle Meier, Area Manager.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Jennifer Ahlf was employed by Acosta Sales & Marketing, Inc. from April 22, 2013 until September 13, 2013 when she voluntarily left work by job abandonment. Ms. Ahlf was employed as a part-time merchandise representative and was paid by the hour. Her immediate supervisor was Michelle Meier.

Ms. Ahlf performed merchandising work for Acosta, Inc. at various retail locations. The claimant accepted assignments by e:mail and set her own schedule for merchandising appointments. The claimant had set appointments at various locations through the month of September 2013.

On August 31, 2013, the employer questioned the validity of some of the claimant's merchandising reports and requested clarification from Ms. Ahlf. The employer received no response. Subsequently, the area manager, Ms. Meier, repeatedly left voice mail and e:mail messages for Ms. Ahlf to contact the company so that she could report her data and continue to make sales calls for Acosta, Inc. Based upon the claimant's failure to respond to any of the messages and e:mails left by the company, the company sent the claimant letters both by regular mail and certified mail instructing her to contact the company by September 13, 2013.

When the letters were not returned as undeliverable and the claimant had not answered any of the numerous attempts to contact her, the company reasonably concluded that Ms. Ahlf had relinquished her position with the company for reasons unknown. Work continued to be available to the claimant at the time that she discontinued reporting and contacting the employer.

It is the claimant's position that she does not "recall" receiving messages or letters from the company.

The employer did not participate in the fact finding of this matter.

### **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.

871 IAC 24.25(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees will report to work as scheduled or be notified when and why the employee is unable to report for work. Inasmuch as the evidence in the record establishes the claimant failed to report for work or notify the employer for three or more consecutive work days in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

Inasmuch as the evidence in the record establishes that the employer made repeated attempts to contact Ms. Ahlf through phone calls, e:mails, regular mail and certified mail and the claimant did not respond to those calls and did not report for scheduled merchandising appointments that she had herself scheduled through the month of September, the employer was reasonable in concluding the claimant had chosen to voluntarily relinquish her position with the company while work continued to be available to her. The administrative law judge finds the claimant's testimony that she did not "recall" whether she was contacted by telephone, e:mail, or letter strains credibility. Unemployment insurance benefits are withheld.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault.

However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The claimant is not liable to repay any overpayment of benefits and the employer's account will be charged for the overpayments because the employer did not participate in fact finding in this matter.

**DECISION:**

The representative's decision dated November 26, 2013, reference 02, is reversed. The claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant has been overpaid unemployment insurance benefits and the amount of the overpayment is remanded to the Claims Division for determination. The employer's account is liable for any overpayment in benefits as the employer did not participate in the fact-finding of this matter.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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