

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

HEIDI DAVIS  
PO BOX 1646  
MARSHALLTOWN IA 50158

DES MOINES REGISTER AND TRIBUNE  
c/o TALX UCM SERVICES  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01657-HT  
OC: 01/09/05 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, Des Moines Register and Tribune (the Register) filed an appeal from a decision dated February 7, 2005, reference 01. The decision allowed benefits to the claimant, Heidi Davis. After due notice was issued a hearing was held by telephone conference call on March 4, 2005. The claimant participated on her own behalf and with a witness Larry Stallwood. The employer participated by Employment Program Manager Sue Decker, State Circulation Manager Bill Seemiller and District Manager Dan Ludiwitz. The employer was represented by UCM Services in the person of Tim Hall

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Heidi Davis was employed by the Register from November 21, 2001 until December 29, 2004. She was a part-time circulation assistant in Marshalltown Iowa.

On December 18, 2004, the claimant attempted to call her supervisor, District Manager Dan Ludiwitz, to say she was going out of town, reportedly because her father was ill. His voice mail picked up, but she did not leave any message for him. Instead, she told Larry Stallwood, a carrier/spotter who is an independent contractor with the Register, to tell the district manager she was leaving.

Mr. Ludiwitz had no idea the claimant was not in Marshalltown performing her regular job duties until December 23, 2004. He was unable to contact her and finally went to Marshalltown on December 28, 2004, to her home. No one was there and he finally contacted Mr. Stallwood who said the claimant was out of town. He had not told the district manager before this because he was angry with the claimant for leaving. The two of them are involved in a personal relationship, but he did not specify why he would be angry she had gone out of town to see her sick father.

When Mr. Ludiwitz received this information he sent the claimant a letter on December 28, 2004, saying she was considered a voluntary quit due to job abandonment. He had personal knowledge she had been no-call/no-show to work for at least December 23, 24 and 26, 2004. She did not receive the letter until she returned to town on January 1, 2005, at which time she called Mr. Ludiwitz at home to ask if she could have her job back. He stated she could not.

Heidi Davis has received unemployment benefits since filing a claim with an effective date of January 9, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant maintains she was out of town from December 18, 2004 until January 1, 2005, to visit her sick father. She acknowledged she could have left a message on Mr. Ludiwitz's voice mail saying she had a family emergency, but did not present any reason why she failed to do this. As a result she did not indicate a length of time she would be gone and the employer would have no idea when she could be expected to return. The claimant also did not contact the employer during her absence to indicate a return to work date.

Ms. Davis's assertion that Mr. Stallwood and she did the same job and "filled in" for each other without needing to contact Mr. Ludiwitz is not credible. If this is the case, she would not have attempted to contact the district manager before she left. The fact that she did at least make the attempt indicates she knew he was her manager and it was to him she should have been reporting her extended absence. She is an employee of the company and Mr. Stallwood is only an independent contractor. Helping each other out in the daily duties does not make him the claimant's supervisor and that means he was not the proper person to notify of any absence.

The claimant submitted into evidence a tape of messages left on an answering machine. The quality of the audio is not good, but it appears to be a business phone on which the district manager would leave messages for the two of them saying where he would be, or that he had left things in their mail box they should be sure and get. Ms. Davis points to this as proof that she and Mr. Stallwood were "interchangeable" as far as their job duties went but the administrative law judge does not find this to be proof of any such thing. The fact that the messages were not addressed to other carriers and spotters does not mean that the two of them jointly "owned" the job of circulation assistant as the claimant asserted.

The same is true of a note from Ms. Ludiwitz addressed to Larry and Heidi. It does not prove that he considered the two of them to be sharing the job, only that the note was addressed to the two of them. The fact there were involved in a personal relationship could have influenced the decision to leave one note (and one phone messages) for the two of them

The administrative law judge concludes the claimant did leave work without proper authorization for two weeks. It is also doubtful she left to visit a sick relative given the fact she could have notified the employer, if this was the case, and asked for a period of leave. This doubt is also bolstered by the fact Mr. Stallwood was angry at her for leaving at Christmas when visiting a sick relative would not be cause for resentment. The very specific length of the absence, exactly one week before Christmas until exactly one week after Christmas, is also highly suspect.

The claimant was no-call/no-show to work in excess of three days. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer. She is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 7, 2005, reference 01, is reversed. Heidi Davis is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,043.00.

bgh/sc