

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

THERESA A ROBERTSON
1305 S LINN ST #212
BOONE IA 50036-5359

ACCESS DIRECT TELEMARKETING INC
c/o TALK UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-01314-CT
OC: 01/01/06 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (Access) filed an appeal from a representative's decision dated January 25, 2006, reference 01, which held that no disqualification would be imposed regarding Theresa Robertson's separation from employment. After due notice was issued, a hearing was held by telephone on February 21, 2006. Ms. Robertson participated personally. The employer participated by Ernie Seeman, Center Manager, and Lori Cunningham, Administrative Assistant. The employer was represented by Dawn Gibson of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Robertson was employed by Access from October 31, 2005 until January 3, 2006 as a full-time telephone sales representative. On January 3, she received a written warning because of her attendance. At that point, she had 2.5 occurrences. An individual is subject to discharge once she accumulates four occurrences.

On January 10, Ms. Robertson called to report that she would be late because she did not have a ride to work. Kelly Woods advised her that the tardiness would cause her to have five occurrences and, therefore, she would no longer have employment. In a second telephone conversation, Ms. Woods indicated that she had spoken to the center manager and that Ms. Robertson was discharged. The center manager was not in the office at the time. Ms. Robertson did not believe she had five occurrences and contacted Lori Cunningham. Ms. Cunningham confirmed that she was not, in fact, at the discharge stage. She indicated that the tardiness of January 10 would only be Ms. Robertson's third occurrence and would result in a final written warning, not discharge.

Ms. Robertson did not report for work on January 10 or at any point thereafter. She did not at any point contact the center manager to confirm her status. Continued work would have been available if Ms. Robertson had continued reporting for work.

Ms. Robertson has received a total of \$840.00 in job insurance benefits since filing her claim effective January 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Robertson was separated from employment for any disqualifying reason. The administrative law judge concludes that she voluntarily quit her employment when she stopped reporting for work without notice. Although she had been told by Ms. Woods that she was discharged because she had five occurrences, Ms. Robertson knew this was not the case. Ms. Cunningham confirmed that her tardiness of January 10 was only her third occurrence. Ms. Robertson had signed a warning just one week before, at which time she had only 2.5 occurrences. She knew that four occurrences were necessary for discharge. Based on her knowledge of the employer's policy, her knowledge of her occurrence status, and the information provided by Ms. Cunningham, Ms. Robertson knew or should have known that Ms. Woods' statement that she was discharged was in error. She knew that the center manager was not in the office at the time and was relying on incorrect information from Ms. Woods when advising that she was discharged. At a minimum, Ms. Robertson should have confirmed her status with the center manager after receiving conflicting information regarding her occurrence status. She did not do so, she simply stopped reporting for work. Based on the foregoing, the administrative law judge concludes that Ms. Robertson initiated the separation. Therefore, it is considered a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any cause attributable to the employer for Ms. Robertson's quit. Accordingly, benefits are denied. Ms. Robertson has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 25, 2006, reference 01, is hereby reversed. Ms. Robertson voluntarily quit her employment with Access for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Robertson has been overpaid \$840.00 in job insurance benefits.

cfc/tjc