

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

PATRICIA A ARNOLD
2120 – 4TH AVE APT C
MARION IA 52302

ACCESS DIRECT TELEMARKETING INC
C/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 06A-UI-00294-JTT
OC: 11/27/05 R: 03
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant Patricia Arnold filed a timely appeal from the December 30, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 3, 2006. Ms. Arnold participated. Jessica Meyer of Johnson & Associates/Talx UC Express represented Access Direct Telemarketing and presented testimony through Center Manager Rich Brecht and Program Manager Bryan Branscomb. Exhibit A was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Patricia Arnold was employed as a full-time Telephone Service Representative from April 4, 2005 until May 23, 2005, when she quit the employment. Ms. Arnold last appeared and worked a shift on May 17, 2005. Ms. Arnold was scheduled to work on May 18, 19, and 23, but neither appeared

for work nor notified the employer of the need to be absent on those dates. The employer's notification policy required Ms. Arnold to telephone the workplace and speak with the Center Manager, her Program Manager, or her immediate supervisor to notify the employer of an absence. Ms. Arnold was aware of the policy. Ms. Arnold had been battling laryngitis for a few weeks prior to separating from the employment. The employer had expressed concern about the extent of Ms. Arnold's absences, but had not discharged Ms. Arnold from the employment. On May 23, Program Manager Bryan Branscomb investigated whether Ms. Arnold had contacted anyone at the workplace in connection with the absences before he recommended to Center Manager Rich Brecht that the employer deem Ms. Arnold to have quit the employment. The employer's written policy deems three consecutive incidents of "no-call, no-show" a voluntary quit. The employer intended to meet with Ms. Arnold to notify her that the employer had elected to terminate the employment under the three-day "no-call, no-show" policy. However, Ms. Arnold failed to return or make any additional contact with the employer.

Ms. Arnold did not seek further employment until the end of 2005, when she returned from a trip to India.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Arnold voluntarily quit was for good cause attributable to the employer. It does not.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25. However, where an employee is absent for three days without giving notice to the employer, and where the employer has a policy that considers such conduct a voluntary quit, the employee is presumed to have quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The administrative law judge finds Ms. Arnold's testimony to be internally inconsistent, inconsistent with the weight of the evidence, and not credible. Ms. Arnold testified that she did not return to work because the employer had not responded to voice mail messages she had left on the dates she was absent. Ms. Arnold testified that she was suffering from laryngitis on the dates in question. Ms. Arnold testified that she was not able to speak above a whisper and that the employer's receptionist had difficulty hearing her. Ms. Arnold then changed her testimony to indicate that the receptionist could understand her. Despite the concerns Ms. Arnold testified to about her inability to verbally communicate with the employer, Ms. Arnold testified she took no additional steps to effect communication with the employer about her absences. The employer provided credible testimony that Ms. Arnold did not, in fact, contact the employer after Ms. Arnold appeared for work on May 17, 2005.

Even if Ms. Arnold's testimony had been credible, the administrative law judge would have concluded that her conduct at the end of her employment was unreasonable and that a reasonable person in her circumstances would have taken additional steps to communicate with the employer before concluding she/he had been discharged from the employment. Ms. Arnold's testimony indicates that she was ambulatory. A reasonable person would have presented herself/himself at the workplace if she/he were genuinely concerned about maintaining the employment. On the other hand, the employer reasonably concluded Ms. Arnold had quit the employment. The administrative law judge notes that Ms. Arnold was only in the employment for seven weeks and appears to have been absent a significant portion of that period. The administrative law judge further notes that Ms. Arnold did not again seek employment until the end of 2005 and appears not to have been motivated to seek further employment until that time.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Arnold voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Arnold is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to Ms. Arnold.

DECISION:

The Agency representative's decision dated December 30, 2005, reference 01, is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

jt/pjs