

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TABITHA KLEMAN**  
Claimant

**APPEAL NO: 11A-UI-02576-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGDATA MANAGEMENT LLC  
DIRECTIONS RESEARCH CORP**  
Employer

**OC: 01/02/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Directions Research Corporation (employer) appealed an unemployment insurance decision dated March 1, 2011, reference 01, which held that Tabitha Kleman (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 March 28, 2011. The claimant participated in the hearing. The employer participated through Nick Foley, Field Services Manager. 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 part-time in data entry from June 7, 2010 through December 1, 2010. Employees are required to turn in their own schedules for the following month. The employer typically puts out blank schedules on the 15th of the month and the employee has until the last Friday of that month to put in his or her schedule for the following month. Employees must work a minimum of 30 hours per week but can sometimes work up to 40 hours per week. The employer is even willing to take schedules over the phone if the employee runs out of time and failed to submit a schedule for the following month.

An employee is allowed to turn in no more than two irregular schedules before their employment ends. An irregular schedule is any schedule for the following month in which the employee does is not scheduled to work the minimum 30 hours per week for a total of 120 hours per month. If an employee does not turn in a schedule, the employer automatically defaults it to an irregular schedule. The claimant already had two irregular schedules: she only had 103 hours in September 2010 and 98 hours in October 2010.

The employer advised its employees on November 3, 2010 that there was not going to be enough work for everyone during the month. The employees who had the lowest production were the ones who were laid off first. The employer specifically told the employees that they were required to turn in their December 2010 schedules and failure to do so would be considered their resignation. The claimant was one of the employees laid off during November 2010 and she failed to submit a schedule by December 1, 2010 so was considered to have voluntarily quit.

The employees who were laid off in November 2010 were returned to work on December 5, 2010 so continuing work was available.

The claimant filed a claim for unemployment insurance benefits effective January 2, 2011 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 by failing to provide the employer with her schedule for December 2010. She had from approximately November 15, 2010 through December 1, 2010 to provide it but either failed to do so.

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 that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated March 1, 2011, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs