

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

JANYCE PROCTOR  
3300 OAKLAND RD NE APT 4  
CEDAR RAPIDS IA 52402-5562

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

Appeal Number: 06A-UI-04777-ET  
OC: 04-09-06 R: 03  
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 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 28, 2006, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 18, 2006. The claimant participated in the hearing. Gloria Allen, Assistant Verification Manager and Fran Wright, Senior Verification Supervisor, participated in the hearing on behalf of the employer with Attorney Jessica Meyer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time verifier for Access Direct Telemarketing from

November 23, 2004 to April 12, 2006. The claimant was absent April 3, 2006, and called in to report her absence, stating she would bring in a doctor's excuse the following day. On April 4, 2006, she brought a note on a yellow piece of paper purportedly from her psychiatrist but the note was not on a letterhead and did not have a phone number. Consequently, the employer would not accept the note as a doctor's excuse and sent the claimant home. On April 5, 2006, the claimant called and said she went to get a note on letterhead for April 3, 2006, but her psychiatrist was in surgery. She asked if that type of note would be acceptable and the employer indicated it would but reminded her she also needed a release to return to work because she was gone three days. On April 6, 2006, the claimant called and told the employer she could not get an excuse from her doctor but could return to work. The employer told her she needed a written release to return and the claimant stated she did not know if she could get one but would do what she could. She did not contact the employer after that date. The claimant testified she told the employer she could not get an excuse for April 7, 2006, and asked if she could be placed on probation and the employer said it would call her back but never did. The claimant did not call the employer again. The employer's policy provides that an employee is considered to have voluntarily quit if she fails to call the employer or report to work for three consecutive workdays. The claimant was a no-call/no-show on April 7, 10 and 11, 2006, and the employer determined she voluntarily quit her employment.

The claimant has claimed and received unemployment insurance benefits after the separation from this employer.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 95.5-1. The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code section 96.6-2.

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 was absent April 3 through April 12, 2006. The only documentation she provided was suspect because it was on a piece of yellow notebook paper without letterhead or a phone number. Although the claimant told the employer she would bring in another doctor's note and a release to return to work she failed to do so despite repeated reminders from the employer of that requirement and her knowledge of the employer's policy. While the claimant stated she asked if she could be placed on probation and the employer never called her back, the claimant

never called the employer back either and it would seem she would have called if she was interested in keeping her job. Consequently, she was deemed to have voluntarily quit on April 12, 2006, after three days of being a no-call/no-show. The administrative law judge concludes the claimant voluntarily left her job and has not demonstrated that her leaving was for good cause attributable to the employer. Therefore, benefits must be denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The April 28, 2006, reference 02, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are denied until such time as 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 claimant is overpaid benefits in the amount of \$628.00.

je/kkf