

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY A TRIPLETT

Claimant

APPEAL NO. 07A-UI-07324-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP

Employer

**OC: 07/01/07 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of representative dated July 19, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 14, 2007. The claimant participated. The employer participated by Angie Bailey and Tim Garthwaite. Exhibit Number One was received into evidence.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct in connection her work or whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from August 1998 until June 26, 2007, when she voluntarily quit employment. Ms. Triplett, due to health problems, had been off work under the provisions of the Family Medical Leave Act. Upon the claimant's return to work on June 26, 2007, she visited with Angie Bailey in the company's human resource department. At that time Ms. Triplett explained that she was considering leaving the company due to her medical condition and her desire to stay home for family reasons. At the conclusion of the meeting, Ms. Bailey believed that the claimant planned to stay, however. Because of lack of documentation for some time missed, and the claimant's failure to provide a medical release upon her return, Ms. Triplett was instructed to meet with her supervisor, Mr. Garthwaite. These matters were discussed in addition to a discussion by the employer about their concern because the claimant had switched her employee telephone account to a "customer" account the preceding day a retail sales center. The employer also believed that the claimant had made statements indicating that she was going to be discharged by the employer at that time to company employees. During the course of the meeting, Ms. Triplett again indicated a need to stay home for family and medical reasons; and in response to questions about unverified time off, the claimant made a decision to leave employment, once again citing her health and her

desire to stay home for family reasons. Ms. Triplett turned in her company equipment to her supervisor, Mr. Garthwaite, and verified her intention to leave by submitting an e-mail to Mr. Garthwaite at 3:33 p.m. that day (Exhibit Number One). Decisions to discharge employees must be authorized by the company's human resource department or upper management. The employer had no plans to discharge the claimant at that time and was attempting to recruit additional customer service representatives.

It is the claimant's position that she did not choose to leave employment but was given the alternative of resigning or being terminated by her supervisor. The claimant maintains that her separation from employment was caused by the employer and that its basis, in part, was because the claimant had "changed churches" and no longer attended a church where her supervisor was a member.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the totality of the hearing record, that a preponderance of the evidence establishes that the claimant chose to voluntarily quit her employment for reasons that were not attributable to the employer. The evidence in the record establishes that Ms. Triplett had been off work for substantial periods of time for medical reasons and that the company had worked with the claimant under the provisions of the Family Medical Leave Act to be away from work and yet not sever the employment relationship. Prior to returning to work on June 26, 2007, the claimant had made statements the preceding day to retail workers indicating that she believed the company was going to discharge her. Although no official action had been taken, the claimant nonetheless changed her employee telephone account to a "customer" account in apparent anticipation that her employment would end. When the claimant returned to work the following day, she met with a human resource worker, Angie Bailey, and made statements to Ms. Bailey indicating the claimant's desire to leave employment for medical reasons and because of family circumstances. Ms. Bailey attempted to cajole the claimant into staying and believed that the claimant would do so. When Ms. Triplett met with her manager later that morning, a number of areas of concern were addressed by her supervisor, including the claimant's statements the preceding day regarding being separated from employment and also inquiries by the employer as to why the claimant would change her employee account to a non-employee "customer" account. During the course of the conversation, the claimant once again indicated her desire to leave employment for medical reasons and also because of a desire to stay home for family reasons. Ms. Triplett then sent her supervisor an e-mail to confirm her decision to leave, dated June 26, 2007, at 3:33 p.m. In the e-mail the claimant made no statements alluding to the fact that she had been forced to resign or that her leaving was contrary to her personal intentions.

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.

For the reasons stated herein, the administrative law judge concludes that the weight of the evidence is established in favor of the employer. The testimony of Ms. Bailey corroborates the testimony of Mr. Garthwaite that the employer desired to keep Ms. Triplett as an employee and that the company had no plans to discharge the claimant or to require her resignation in lieu of being discharged. The administrative law judge therefore concludes that the claimant

voluntarily quit her employment for reasons that were not attributable to the employer and for reasons that are disqualifying.

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. The claimant has been overpaid benefits in the amount of \$2,297.00.

DECISION:

The representative's decision dated July 19, 2007, reference 01, is hereby reversed. The claimant's quitting was not attributable to the employer. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to not less than ten times her weekly job insurance benefits amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,297.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw