

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI L MORRISON HUGHES**  
Claimant

**APPEAL NO. 08A-UI-06811-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 12-02-07 R: 02**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 22, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on August 11, 2008. The claimant did participate. The employer did participate through Carl Rush, Telesales Manager and was represented by Bill O'Neil of Barnett Associates.

**ISSUE:**

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

Has the claimant been overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a consumer sales and service representative full-time beginning January 21, 2008 through June 26, 2008 when she voluntarily quit.

The claimant quit because she did not like the way her supervisor, Carl Rush spoke to her. On June 6 the claimant had been placed on an improvement plan as she was not meeting the employer's sales goals. The claimant was told at that meeting that she was to offer all five products to every customer, not just the three she had been offering. On June 26 Mr. Rush again met with the claimant and told her that she was not meeting her sales goals. The claimant alleges that Mr. Rush told her she was "not worth anything" and that she was "not worth fighting for" at the monthly meeting. Mr. Rush denies telling the claimant that she was "not worth anything," but indicated that he had to justify the claimant's continued employment to his superiors in light of her failure to reach her sales goals. The claimant admits that she was not always offering all customers the five products as she had been instructed to do. Mr. Rush never told the claimant that she was going to be discharged. He coached her on how to meet her sales goals and what the employer wanted her to do in specific situations.

While the claimant alleges she was not given the proper listening device, she was told that in order to qualify for the device, she needed to present a note from her doctor indicating her need for the listening device. The claimant never presented the note from her doctor.

After the claimant met with Mr. Rush on June 26, she returned to her desk and began working. Sometime later, the claimant packed up her things and left her identification badge on her desk and left the premises. The claimant quit because she did not like the way Mr. Rush treated her or spoke to her.

Claimant has received unemployment benefits since filing a claim with an effective date of December 2, 2007.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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.

871 IAC 24.25(21), (22) 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 § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Parts of Mr. Rush's responsibilities were to counsel the claimant on how she could better perform her job duties and responsibilities. He was doing so during the meeting on June 26. The administrative law judge is not persuaded that Mr. Rush told the claimant she was worthless. Mr. Rush did explain to the claimant that he was going to have to justify keeping her employed if she did not meet the sales goals and expectations. The claimant has not established that simple counseling or coaching created a detrimental or hostile work environment. The claimant did not like the criticism and chose to quit by packing her things and leaving. While the claimant may not have gotten along well with Mr. Rush, he was within his rights to counsel and set expectations for her performance. He did not speak to the claimant in

a derogatory or demeaning manner. The claimant's leaving was without good cause attributable to the employer. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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 July 22, 2008, reference 02, decision is reversed. Claimant voluntarily left her employment without 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 benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$492.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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