

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

DARYL C HOLTON  
5015 SW 9<sup>TH</sup> ST #8  
DES MOINES IA 50315

ACCESS DIRECT TELEMARKETING INC  
C/o TALX UC EXPRESS  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 04A-UI-07598-C  
OC: 06/13/04 R: 02  
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, 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 Quit

STATEMENT OF THE CASE:

Daryl Holton filed an appeal from a representative's decision dated July 6, 2004, reference 01, which denied benefits based on his separation from Access Direct Telemarketing, Inc. (Access). After due notice was issued, a hearing was held on August 5, 2004 in Des Moines, Iowa. Mr. Holton participated personally. The employer participated by Kelly Woods, Program Manager, and was represented by Peg Heenan, Attorney at Law, who participated by telephone.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Holton began working for Access on March 31, 2003 as a telephone sales representative working 29.5 hours each week. He began a leave of absence on April 26, 2004 and was to return to work on May 17. The leave was for personal reasons as Mr. Holton was dealing with issues involving the custody of his children. He had a meeting with social services in Illinois on May 16 but did not have any other meetings or court appearances during the leave. He and his estranged spouse were having conversations as to where the children were going to reside and with whom.

Prior to May 17, Mr. Holton was granted an extension of his leave time and was to return to work on May 24, which he did. On May 25, he called to report that he would not be at work because he had been involved in an auto accident and had a family function to attend that day. The auto accident was a minor fender-bender and did not result in any injury to Mr. Holton. The accident did not prevent him from working. The family function he attended was the graduation of his nieces and nephews. Mr. Holton did not report for work or contact the employer on May 26. On May 27, he spoke to Kelly Woods and indicated he needed to take additional time off. He was directed to contact the manager but did not do so. The employer did not hear anything further from Mr. Holton until June 4 when he called to ask about severance pay.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Holton was separated from employment for any disqualifying reason. The administrative law judge concludes that he quit the employment when he stopped reporting for available work after May 27. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). The administrative law judge concludes that Mr. Holton left his employment because of personal issues involving the placement of his children. He had been allowed to take one month off to deal with the matter but still had not resolved it when he returned to work on May 24. He did not need additional time off to attend court or other legal proceedings. He wanted time off after May 27 to continue having conversations with his spouse regarding the placement of their children. Inasmuch as the conversations could have occurred around Mr. Holton's work schedule, the employer's denial of an extension beyond May 24 did not constitute good cause attributable to the employer for quitting. An individual who leaves employment because of serious family needs or responsibilities is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(23). For the above reasons, the administrative law judge concludes that Mr. Holton did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied.

Even if the administrative law judge were to conclude that Mr. Holton had been discharged, he would still be disqualified from receiving job insurance benefits. He had been warned about his attendance in early April of 2004. His absence of May 25 would be considered unexcused as it was for personal reasons; attendance at a family function. The absence of May 26 would be unexcused as it was not properly reported to the employer. His absences of May 27 and forward would be considered unexcused as they were due to personal matters; issues involving his children. Given this series of unexcused absences following a warning about his attendance, the administrative law judge would conclude that disqualifying misconduct had been established, and benefits would be denied.

DECISION:

The representative's decision dated July 6, 2004, reference 01, is hereby affirmed as to result. Mr. Holton quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/tjc