

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

KERI S MCCUSKER
147 – 40TH ST NE
CEDAR RAPIDS IA 52402

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

JESSICA DOUGLAS
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Appeal Number: 04A-UI-10132-CT
OC: 08/01/04 R: 03
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Keri McCusker filed an appeal from a representative's decision dated September 7, 2004, reference 01, which denied benefits based on her separation from Access Direct Telemarketing, Inc. (Access). After due notice was issued, a hearing was held by telephone on October 11, 2004. Ms. McCusker participated personally and Exhibit A was admitted on her behalf. The employer participated by Renae Hubbard, Administrative Assistant, and was represented by Jessica Douglas, Attorney at Law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. McCusker began working for Access in April of 2003. Prior to July 21, 2004, she was a full-time supervisor. Due to cutbacks in management, Ms. McCusker was notified on July 21 that she was being demoted to being a telephone sales representative. She had been working approximately 50 hours per week as a supervisor but would only work from 25 to 32 hours each week as a sales representative. She lost at least \$1,200.00 per year in wages. Because of changes in her job, Ms. McCusker decided to take classes at Kirkwood Community College.

The employer agreed to try to work around Ms. McCusker's school schedule. She immediately registered for three classes, one of which allowed her to work at home at her own pace. Another class was from 10:00 to 11:00 a.m. on Monday, Wednesday, and Friday. The remaining class met on Tuesday and Wednesday from 12:00 noon until 1:00 p.m. Five days after she registered for class, Ms. McCusker was notified that the employer expected her to work from 1:00 until 9:00 p.m. She changed her Tuesday/Wednesday class to one which met at 9:00 a.m. so that she would not be late for her 1:00 p.m. work shift. Three days later, Ms. McCusker was advised that the campaign the employer anticipated placing her in had been cancelled. She was told that the only work Access had available for her was from 7:00 a.m. until 1:00 p.m., Monday through Friday. The classes she needed were no longer available during the hours she would not be working. Therefore, Ms. McCusker quit her job on July 29, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McCusker was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ordinarily, quitting employment to attend school is not considered good cause attributable to the employer. See 871 IAC 24.25(26). However, for reasons to follow, the administrative law judge concludes that Ms. McCusker's separation was attributable to the employer.

The employer indicated they would try to work around Ms. McCusker's class schedule. She enrolled for classes with this understanding. The employer told her what hours she would be working and she altered her class schedule so that she would be able to work her scheduled hours without being late coming from class. The decision to quit was forced because the employer changed the work schedule to the extent that Ms. McCusker would not have been able to attend either of her two classes held on campus. The administrative law judge appreciates that the change was necessitated by an unforeseen circumstance, the cancellation of a campaign. However, Ms. McCusker had changed her circumstances by spending money on school in good-faith reliance that she would be working from 1:00 until 9:00 p.m. To find good cause attributable to the employer for quitting, there need not be fault or wrong-doing on the part of the employer. See Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated September 7, 2004, reference 01, is hereby reversed. Ms. McCusker quit her employment for good cause attributable to the employer. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf