

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA K JESSEN
Claimant

APPEAL NO. 11O-UI-10671-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

**OC: 02/27/11
Claimant: Respondent (2R)**

Section 96.5-3-a – Refusal of Recall

STATEMENT OF THE CASE:

Marketlink, Inc. filed a timely appeal from an unemployment insurance decision dated March 31, 2011, reference 01, that allowed benefits to Donna K. Jessen. After due notice was issued, a telephone hearing was held May 13, 2011. Administrative Law Judge decision 11A-UI-04639-PT issued May 16, 2011 disqualified Ms. Jessen for benefits. Ms. Jessen filed an appeal with the Employment Appeal Board which, in a remand order dated August 11, 2011 ordered further proceedings. After due notice was issued, a telephone hearing was held November 16, 2011 with Ms. Jessen participating. Human Resources Manager Amy Potratz, Operations Senior Vice President Bob Beaman and Storm Lake Call Center Manager David Munoz participated for the employer. Claimant Exhibit A was admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant refuse recall to suitable work?

FINDINGS OF FACT:

Donna K. Jessen was temporarily laid off by Marketlink, Inc. on March 4, 2011. She was laid off because the ratio of supervisory personnel to telephone sales representatives was too high. Daniel J. Bern, Ms. Jessen's direct supervisor, then resigned. Ms. Jessen was recalled to her prior position. The only change would be that instead of reporting to Mr. Bern, she would report to Call Center Manager David Munoz. She declined recall because of concern with working directly for Mr. Munoz. At the time of Ms. Jessen's layoff, Mr. Munoz suggested that Ms. Jessen tell her subordinates that she was leaving employment to become a stay at home mom. Ms. Jessen, in Mr. Munoz's presence, told her staff the real reason for her departure.

The claimant has received unemployment insurance benefits since filing a claim effective February 27, 2011.

REASONING AND CONCLUSIONS OF LAW:

An individual is disqualified for benefits if the individual refuses a suitable recall to a prior position. See Iowa Code section 96.5-3-a. The record establishes that the only reason that Ms. Jessen declined recall was the fact that she did not wish to work directly for Mr. Munoz. There is no evidence in the record that Munoz would have taken action against Ms. Jessen for stating the actual reason for her layoff. The administrative law judge concludes that the claimant refused recall for insufficient reasons. Benefits are withheld.

Iowa Code section 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.

The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated March 31, 2011, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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