

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLEE COLEMAN
Claimant

APPEAL NO. 07A-UI-10027-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 09/23/07 R: 02
Claimant: Respondent (2)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Qwest, filed an appeal from a decision dated October 23, 2007, reference 01. The decision allowed benefits to the claimant, Carlee Coleman. After due notice was issued, a hearing was held by telephone conference call on November 14, 2007. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Center Sales Service Manager Michael Miklus and was represented by Barnett Associates in the person of Steven Zaks.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Carlee Coleman was employed by Qwest from October 16, 2006 until September 12, 2007, as a full-time sales and service associate. Her last day of work was Friday, September 7, 2007, and she was no-call/no-show to work after that. Center Sales and Service Manager Michael Miklus sent her a letter on her first day of absence notifying her she must call him by September 12, 2007, or she would be considered to have abandoned her job. In addition, Mr. Miklus called her telephone number of record and left three voice mail messages for her to call him on September 10, and two more messages on September 11, 2007.

Ms. Coleman never responded to the letter or the voice mail messages. When she did not come to work or contact the employer as of September 12, 2007, she was considered a voluntary quit.

Carlee Coleman has received unemployment benefits since filing a claim with an effective date of September 23, 2007.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(4) 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 section 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 section 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was no-call/no-show to work for three days in violation of a known company rule. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 23, 2007, reference 01, is reversed. Carlee Coleman is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,358.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw