

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATERINA A SCHULTZ

Claimant

APPEAL NO. 09A-UI-01857-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING NIC

Employer

**OC: 12/07/08 R: 03
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Katerina Schultz filed a timely appeal from the February 2, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 26, 2009. Ms. Schultz participated. The employer indicated in writing prior to the hearing that the employer elected not to participate in the hearing.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Katerina Schultz was employed by Access Direct Telemarketing as a full-time customer service representative (telemarketer) from April 30, 2007 until December 26, 2008, when she voluntarily quit. Ms. Schultz's quit was prompted by problems she encountered in obtaining her commission pay. Ms. Schultz initially encountered problems in getting her commission pay when the employer failed to pay her two weeks' commission for October. Ms. Schultz provided the employer with documentation to support her request for the commission. In December, the employer provided Ms. Schultz with commission pay for one of the October weeks in question, but not for the other. During December 2008, Ms. Schultz encountered additional significant problems in having her commission pay appropriately calculated and receiving her commission pay. Ms. Schultz brought her concerns to the employer and notified the employer she would quit if the commission pay issues were not resolved. Ms. Schultz quit on December 26, 2008, after she had given the employer reasonable opportunity to resolve the commission pay issues, but they remained unresolved. One or more coworkers in similar circumstances left the employment as well.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The weight of the evidence indicates that Ms. Schultz voluntarily quit the employment in response to intolerable working conditions concerning the employer's failure to properly compensate her for her work. The difficulties Ms. Schultz encountered would have prompted a reasonable person to leave the employment. Ms. Schultz voluntarily quit the employment for good cause attributable to the employer. Ms. Schultz is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Schultz.

DECISION:

The Agency representative's February 2, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css