

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

JILL J REAVIS  
544 HARTWIG WAY  
NEWTON IA 50208

UNITED STATES CELLULAR  
CORPORATION  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11971-RT  
OC: 09/26/04 R: 02  
Claimant: Respondent (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, 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, United States Cellular Corporation, filed a timely appeal from an unemployment insurance decision dated October 20, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Jill J. Reavis. After due notice was issued, a telephone hearing was held on November 30, 2004, with the claimant participating. Paige Hall, Associate Relations Manager, and Lisa Dougall, Store Manager of the employer's store in Altoona, Iowa, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time retail wireless consultant from February 18, 2003 until she separated from her employment on April 19, 2004. On April 16, 2004, the claimant sent an email to the interim or acting store manager of the employer's store in Altoona, Iowa, Lisa Dougall, one of the employer's witnesses. The email indicated that the claimant was resigning effective May 2, 2004 with her last day of work being May 1, 2004. The claimant did not say why she was resigning. The employer accepted the claimant's resignation on Monday, April 19, 2004 and told the claimant that she would not be working the rest of the notice period, and basically discharged the claimant as of that date. Ms. Dougall did this because she felt it would be in the employer's best interest for the claimant to leave immediately rather than work her two weeks.

The claimant quit because of a significant reorganization of the employer. The claimant informed Ms. Dougall that she did not like the changes that were taking place in the employer. The previous manager informed the claimant in March 2004 before the reorganization was implemented that she would no longer be the store manager once the reorganization began. The claimant was upset at this and this was one of the reasons for the claimant's quit. The claimant believed that too many changes and reshuffling was occurring including the manager's position. The claimant testified that she did not know to whom she was to report. However, there was always a manager or acting manager at the employer's store in Altoona, Iowa, where the claimant was employed and there was always a supervisor to whom the claimant was to report. Further, the reorganization did not appear to be one that would be ongoing but that would end once the reorganization plan was implemented. The claimant also quit because of an annual review that placed the claimant on an action plan. The claimant was not discharged or even told that she would be discharged imminently, but was placed on an action plan requiring the claimant to improve her work performance. The claimant also wanted to transfer but none was forthcoming. However, the employer had never promised the claimant any transfer. Other than expressing some concerns to the previous manager, the claimant never expressed any concerns to the employer about any of these matters nor did she ever indicate or announce an intention to quit to anyone at the employer, if her concerns were not addressed by the employer. If the claimant had not resigned, work would have been available for her. Under the reorganization, the claimant's hours were not going to change nor was her pay going to change nor was her job functions going to change. The claimant would be getting a new manager or at least a new supervisor. The claimant was told that if she did not improve per the action plan that she might lose her job, but that was not imminent. No one told the claimant that if she did not resign she would be discharged.

Pursuant to her claim for unemployment insurance benefits filed effective September 26, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,790.00 as follows: \$310.00 per week for nine week from benefit week ending October 2, 2004 to benefit week ending November 27, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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 (20), (21), (28) provide:

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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(21) The claimant left because of dissatisfaction with the work environment.

(28) The claimant left after being reprimanded.

The parties agree, and the administrative law judge concludes, that the claimant voluntarily quit her employment effective May 2, 2004 when she sent an email on April 16, 2004 indicating that she was resigning and her last day of work would be May 1, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she left for personal reasons but did not specify any particular personal reason. Leaving work for compelling personal reasons when the period of absences exceeds ten working days is not good cause attributable to the employer. The claimant testified further that she left her employment because there were too many changes and reshuffling, in particular of managers, pursuant to the employer's reorganization. The claimant testified that she did not know to whom she was to report. However, the evidence indicates that at all material times the employer had either a manager or an interim manager at the employer's location in Altoona, Iowa, where the claimant was employed. The claimant was upset that the previous manager was no longer going to be the store manager. The administrative law judge concludes that the claimant really resigned because she was dissatisfied with the reorganization and the loss of the store manager but leaving work because of the dissatisfaction with the work environment is not good cause attributable to the employer. Finally the claimant testified that on her annual review she was put on an action plan but she was not facing eminent discharge. The claimant was told in some fashion that she needed to improve or she might be facing termination but it was not imminent and no date was specified.

The administrative law judge concludes that this annual review was in the nature of a reprimand and leaving work voluntarily because of a reprimand is not good cause attributable to the employer.

The claimant testified that she wanted to transfer but the employer would not allow her to do so. The claimant conceded that she had never been promised a transfer. The administrative law judge concludes that there is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. The evidence indicates that the claimant's hours, pay, and functions were not going to change under the reorganization. Finally, the only person to whom the claimant expressed any concerns was the previous manager in March 2004 and she did not express any concerns to anyone else. The claimant also conceded that she had never indicated or announced an intention to quit to anyone at the employer if her concerns were not addressed. The claimant did not give the employer a reasonable opportunity to address any of her concerns. Accordingly, the administrative law judge concludes that the claimant voluntarily quit effective May 2, 2004 without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits from and after May 2, 2004 or benefit week ending May 8, 2004. Unemployment insurance benefits are denied to the claimant from and after May 2, 2004 or from and after benefit week ending May 8, 2004, until or unless she requalifies for such benefits.

It is true that where the claimant gives the employer an advance notice of resignation and this causes the employer to discharge the claimant prior to the proposed date of resignation no disqualification shall be imposed upon the claimant from the last day of work until the proposed date of resignation. However, unemployment insurance benefits will be denied effective the proposed date of resignation. See 871 IAC 24.25(38). Here, the employer discharged the claimant on April 19, 2004, which was prior to the claimant's proposed date of resignation. During the interim period from April 19, 2004 to May 2, 2004 the claimant would ordinarily be entitled to receive unemployment insurance benefits. However, the claimant did not apply for unemployment insurance benefits until an effective date of September 26, 2004, long after the claimant's proposed date of resignation.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,790.00 since separating from the employer herein on or about April 19, 2004 and filing for such benefits effective September 26, 2004, to which she is

not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision dated October 20, 2004, reference 01, is reversed. The claimant, Jill J. Reavis, is not entitled to receive unemployment insurance benefits, from and after May 2, 2004 or from and after benefit week ending May 8, 2004, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer effective May 2, 2004. Although the claimant might have been entitled to unemployment insurance benefits prior to May 2, 2004 she did not apply for such benefits. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,790.00.

kjf/kjf