

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAIGE STEMLER**

Claimant

**APPEAL NO: 12A-UI-12206-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AT&T MOBILITY SERVICES LLC**

Employer

**OC: 08/26/12**

**Claimant: Appellant (1R)**

Section 96.5-1 – Voluntary Leaving  
871 IAC 24.25(38) – Resignation Notice/Termination  
Section 96.3-7 – Recovery of Benefit Overpayment  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 24, 2012, reference 02, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 8, 2012 and continued on March 5, 2013. The claimant participated in the hearing with witnesses/former customer service representatives for the employer, Carmen Zecchino and Amanda Curtis. Christy Barker, Area Manager; Sheila Hynes, Team Manager; Mike Kelly, Quality Manager; and Jacquelin Jones and Margaret Barnes, Employer's Representatives, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

**ISSUES:**

The issues are whether the claimant's appeal is timely, whether she voluntarily left her employment with good cause attributable to the employer and whether she was discharged as a result of submitting her resignation notice.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on September 24, 2012. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 4, 2012. The appeal was not filed until October 11, 2012, which is after the date noticed on the disqualification decision. The claimant's father was diagnosed with cancer after the fact-finding interview and consequently she went to Florida to see her father September 26, 2012 and returned October 11, 2012. She called the Department from Florida to ask if it could tell her the outcome of her case over the phone but was told she would have to wait until she could get her mail. The claimant stated she filed the appeal the day she returned from Florida. Therefore, her appeal must be found timely.

The claimant was employed as a full-time customer service representative for AT&T Mobility Services from March 8, 2010 to August 17, 2012. She submitted her four-week resignation notice August 3, 2012 with an effective date of August 31, 2012. She stated her reason for leaving was to go to Chicago to complete in a cooking contest and planned to attend culinary school.

The claimant testified she was diagnosed with irritable bowel syndrome (IBS) in April 2012 and with ulcers in June 2012. Those conditions caused her to have to use the restroom more frequently than other employees and she stated she requested an accommodation from Team Manager Sheila Hynes but Ms. Hynes repeatedly failed to act on her request and verbally reprimanded the claimant for leaving her desk so often to use the restroom. The claimant was counseled April 13, 2012, for failing to perform her job duties. On July 13, 2012, Ms. Hynes met with the team and went over the company wide expectations of team members, including that they be logged in to their phones/computers or at least contact their team manager before leaving their desks for reasons other than breaks or lunch. On July 26, 2012, Ms. Hynes met with the claimant and issued her a written warning regarding excessive log outs and the claimant agreed to correct her behavior. Ms. Hynes believed the claimant was using her after call button too often and if an employee used the after call button frequently to leave their desks it affected their statistics and the team statistics. The proper procedure is for an employee to use her after call button on her phone if she needed to use the restroom and return and start taking calls again. After an absence of five to eight minutes a manager notices the employee is gone and logs her out because she thinks the employee is on break or at lunch and the Workforce Department would also log the employee out. Ms. Hynes never noticed the claimant on after call or logged out to use the restroom.

On August 8, 2012, after the claimant submitted her resignation notice, she logged out for her 15-minute break at 5:12 p.m. and did not return until 5:56 p.m. Ms. Hynes went to look for her and found her in the smoking area on her cell phone and began an investigation into the claimant's time away from her desk. On August 10, 2012, while the investigation was going on, Ms. Hynes went to a meeting and Area Manager Christy Barker noticed the claimant was gone and not on break. She found her in the smoking area talking on her cell phone. Ms. Barker asked the claimant what she was doing and the claimant stated she was talking to her father. Ms. Barker instructed the claimant to return to work and the claimant repeated she was talking to her father. The employer checked the claimant's time and discovered that she spent 6.45 hours away from her desk between August 3 and August 10, 2012, when she should have been at her desk and without speaking to Ms. Hynes about the reasons for her absences. At the completion of its investigation the employer terminated the claimant's employment August 17, 2012, without allowing her to finish her notice period because she was abusing her time away from her desk.

The claimant has claimed benefits since her separation from employment and received benefits the week ending September 1, 2012.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant maintains that she repeatedly provided Ms. Hynes with medical documentation regarding her medical conditions and need for an accommodation so she could leave her desk more frequently than other employees to use the restroom, Ms. Hynes credibly testified the claimant never gave her medical documentation or asked for an accommodation. The employer uses a third party provider for issues such as medical excuses, FMLA and accommodations. The 800 number for the third party provider is available on the employer's website and is contained on all employee disciplinary actions as well. If the claimant had provided doctor's notes or asked for an accommodation she would have been referred to the third party provider.

Approximately one year before the claimant's separation from employment, the claimant became very ill on the call floor and Ms. Hynes drove her to the hospital. The claimant told Ms. Hynes the problem had been found and corrected and never notified Ms. Hynes of the specifics of her medical condition. Had Ms. Hynes known of the claimant's medical issues, she would have been concerned by her unexcused absences from her desk, fearing that she was ill, but every time she had to look for the claimant she found her in the smoking area on her cell phone, not in the restroom.

After carefully weighing the testimony of the witnesses, the administrative law judge concludes the claimant had a conflict with Ms. Hynes because she expected her to remain at her desk except for lunch, scheduled breaks or restroom breaks and as a result voluntarily quit her job without good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

The remaining issue is whether the claimant is eligible for benefits for the time between her termination August 17, 2012, and the effective date of her resignation notice August 31, 2012.

871 IAC 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

If a claimant commits misconduct during her notice period and the employer terminates her employment during that time, the issue of the misconduct must be considered for that time period. The majority of the employer's issues with the claimant occurred after she gave her resignation notice and was absent from her desk for 6.45 hours between August 3 and August 10, 2012. The employer found the claimant in the smoking area on her cell phone on at least two occasions and she was gone for 44 minutes August 8, 2012. It appears that once the claimant knew she was leaving her employment she disregarded the employer's rules and failed to follow directions. The claimant's unexcused absences from her desk rise to the level of disqualifying job misconduct. Consequently, benefits are also denied for the week ending September 1, 2012.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The September 24, 2012, reference 02, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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