

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

MARGARET R LEGRAND
713 ASHFORD DR NE
CEDAR RAPIDS IA 52403

VOLT MANAGEMENT CORPORATION
c/o TALX UC EXPRESS
PO BOX 66736
ST LOUIS MO 63166-6736

Appeal Number: 04A-UI-12828-RT
OC: 01-18-04 R: 03
Claimant: Respondent (4)

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, 4th 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 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Volt Management Corporation, filed a timely appeal from an unemployment insurance decision dated November 22, 2004, reference 04, allowing unemployment insurance benefits to the claimant, Margaret R. LeGrand. After due notice was issued, a telephone hearing was held on December 22, 2004, with the claimant participating. Stormy Kolden, Recruiter, participated in the hearing for the employer. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development 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 employer is a temporary employment agency. On or about February 9, 2004, the claimant was assigned to Rockwell Collins for a six-month assignment. In July the assignment was extended for a year, to February 9, 2005. On or about October 14, 2004, the claimant was informed by a manager at Rockwell Collins that her assignment would be ended on October 28, 2004, which would be her last day of work. The claimant, on that same day, sent an e-mail message to Marvin Meier, the employer's representative at Rockwell Collins, informing him that her assignment was over and asking if there was any other work. When claimant discovered that there would be no work for her to do the last week of her employment, on October 19, 2004 the claimant sent an e-mail message to the employer, informing the employer that Friday, October 22, 2004 would be her last day due to family commitments. Since the claimant had nothing to do at work and had an opportunity to visit with her grandchildren, she decided to advance her leaving date one week. The claimant's last day of work was October 21, 2004. The claimant was then contacted by Mr. Meier on October 22, 2004. Mr. Meier indicated that he was confused because of the e-mail the claimant sent on October 19, 2004. The claimant explained that she was not intending to quit the employer and if there were other assignments, she would take them. Mr. Meier said that there was not anything at that time. The claimant has maintained contact with Mr. Meier and there have been no other assignments available for the claimant. Pursuant to her claim for unemployment insurance benefits filed effective January 18, 2004 and reopened effective October 24, 2004, the claimant has received, among other benefits, unemployment insurance benefits in the amount of \$300.00 for benefit week ending October 30, 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, for one week, benefit week ending October 30, 2004, because she left work voluntarily on October 21, 2004, one week in advance of an anticipated layoff to begin October 28, 2004.
2. Whether the claimant is overpaid unemployment insurance benefits. She is, for \$300.00 for benefit week ending October 30, 2004..

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 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:

871 IAC 24.25(38) provides:

(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.

The parties agree that the claimant voluntarily quit effective October 21, 2004 when she sent an e-mail to the employer to that effect dated October 19, 2004. The administrative law judge concludes, therefore, that the claimant did leave her employment voluntarily effective October 21, 2004. The evidence also establishes that the claimant would have been laid off from her assignment effective October 28, 2004, had she remained employed at her assignment with Rockwell Collins. The claimant quit early, effective October 21, 2004, because there was nothing to do at Rockwell Collins and she could spend time with her grandchildren. These reasons are not good reasons attributable to the employer. The administrative law judge concludes what the claimant really did was voluntarily quit one week in advance of an announced scheduled layoff. In that case, the disqualification period will be from the last day worked to the date of the scheduled layoff. The claimant's last day of work was October 21, 2004, and her scheduled layoff would have been after October 28, 2004. The claimant could have remained employed and been paid through October 28, 2004, but she chose to leave her work early. Accordingly, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits for benefit week ending October 30, 2004 because she left work voluntarily when work was available; but thereafter, the claimant is not disqualified to receive unemployment insurance benefits because she would have been laid off for a lack of work. Unemployment insurance benefits are denied to the claimant for benefit week ending October 30, 2004 but allowed to the claimant from and after benefit week ending November 6, 2004, provided she is otherwise eligible.

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, among other benefits, the claimant has received unemployment insurance benefits in the amount of \$300.00 for benefit week ending October 30, 2004. The administrative law judge concludes that the claimant is not entitled to

these benefits and is overpaid such benefits. 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 November 22, 2004, reference 04, is modified. The claimant, Margaret R. LeGrand, is not entitled to receive unemployment insurance benefits for benefit week ending October 30, 2004 because she left her work voluntarily in advance of a layoff. The claimant is entitled to receive unemployment insurance benefits beginning with benefit week ending November 6, 2004 and continuing thereafter, provided she is otherwise eligible, because she would have been laid off for a lack of work. The claimant has been overpaid unemployment insurance benefits in the amount of \$300.00.

b/b