

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA J EVANS

Claimant

APPEAL NO. 09A-UI-15169-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

**Original Claim: 09/06/09
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Qwest Corporation filed a timely appeal from a representative's decision dated September 30, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on December 8, 2009. The claimant participated personally. The employer participated by Steve Zaks, hearing representative, and witness Neil Waldner. Exhibits One through Four were received into evidence.

ISSUE:

At issue is whether the claimant voluntarily left employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Carla Evans was employed by Qwest Corporation from April 21, 2008, until September 4, 2009, when the employer reasonably concluded the claimant had voluntarily quit her employment. Ms. Evans was employed as a full-time customer service associate and was paid by the hour. Her immediate supervisor was Neil Waldner.

Ms. Evans left work during the work shift on August 28, 2009, without authorization or providing advance notice to the employer. Subsequently, the claimant's supervisor found a note that the claimant had left that stated:

"Neil, I had to go home. I really can't handle all the stress at home and it's making me really depressed and I can't make my numbers anymore and that's not helping either. I am so sorry and want to thank you for everything. This is really hard for me. Thank you. Karla."

Prior to finding the claimant's apparent resignation letter, the employer had sent correspondence to what the company believed to be the claimant's correct mailing address, inquiring as to why the claimant was not reporting for scheduled work. On September 4, 2009, the claimant was sent a letter that advised the claimant that because she had not reported for scheduled work between September 1 and September 4, 2009, and had not provided notification, she was being separated from employment.

Ms. Evans had not reported for scheduled work for three or more consecutive workdays and had not provided notification to the employer of her reasons for absence. When the employer found the note that the claimant had left on or about August 28, 2009, the employer concluded that the claimant's intention had been to voluntarily relinquish her position with the company.

Ms. Evans left her employment with Qwest Corporation due to stress associated with domestic circumstances. The claimant's husband, who had previously been incarcerated, had been released and Ms. Evans was concerned for her safety. Prior to leaving the employment, the claimant did not inform her supervisor or management of any safety concerns at the workplace and did not call police authorities, reporting what she may have considered to be threatening conduct by her husband.

Company employees are aware that they can go to management with concerns related to their employment or their safety while at work. Ms. Evans did not do so prior to leaving her employment without advance notice.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant left her employment with Qwest Corporation with good cause attributable to the employer. She did not.

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.

The evidence in the record establishes that Ms. Evans relinquished her position with Qwest Corporation by leaving work without authorization and by failing to report back to work or providing any further notification to the employer for three or more consecutive workdays. Subsequently, the employer discovered a note left by the claimant on her last work date, in effect resigning her position with the company. After the claimant had not reported back for scheduled work or provided any notification to the employer for a substantial period of time, the employer reasonably concluded the claimant's intention was to voluntarily relinquish her position with the company.

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.

For the above-stated reasons, the administrative law judge concludes that Ms. Evans left employment without good cause attributable to the employer. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated September 30, 2009, reference 01, is reversed. Karla Evans is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw