

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL J BERN**  
Claimant

**APPEAL NO. 11A-UI-04611-PT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARKETLINK INC**  
Employer

**OC: 03/06/11**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 30, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 4, 2011. Claimant participated. Employer participated by Amy Potratz, human resource manager, Bob Beaman, senior vice president and David Munoz, site manager.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed with the employer from January 20, 2003 through March 7, 2011. He voluntarily quit his employment because he felt his supervisor may have tried to access his e-mail account without claimant's permission.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 record establishes that claimant's supervisor did not access claimant's email account and there is no evidence that he attempted to do so. Further, even if the supervisor had done so such would not establish a detrimental and intolerable work environment for claimant. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

Iowa Code § 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 claimant is overpaid is remanded for determination.

**DECISION:**

The March 30, 2011, reference 01, decision is reversed. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided claimant is otherwise eligible. The issue of whether claimant is overpaid is remanded for determination.

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Ron Pohlman  
Administrative Law Judge

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Decision Dated and Mailed

rrp/pjs

