

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

ANTONIA M REYNOLDS
810 SW PAYTON #34
DES MOINES IA 50315

AMERICAN LIMITED
1355 50TH ST
WEST DES MOINES IA 50266

Appeal Number: 06A-UI-00207-RT
OC: 12-04-05 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Antonia M. Reynolds, filed a timely appeal from an unemployment insurance decision dated December 28, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on January 23, 2006, with the claimant participating. Orlo Mundorf, Vice President and General Manager, and Janice DePhillips, Phone Room Manager, participated in the hearing for the employer, American Limited. At 3:00 p.m. on January 20, 2006, the claimant called and spoke to the administrative law judge about a subpoena. The claimant requested that a witness be subpoenaed for her hearing but could provide no address. The administrative law judge refused to issue such subpoena because the claimant did not have an address for the witness and further there was

no time for the subpoena to be issued. The claimant called at 3:00 p.m. on January 20, 2006, which was a Friday, and the hearing was to be held at 2:00 p.m. on Monday January 23, 2006. The administrative law judge explained that he could recess the hearing and keep the record open pending the issuance of a subpoena and then reconvene the hearing to take the testimony of any crucial witness. The administrative law judge now concludes that the testimony of the claimant's witness is not necessary and the claimant's request is permanently denied and the record was closed and the hearing completed at 2:49 p.m.

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 telemarketer from July 11, 2005 until she voluntarily quit effective December 6, 2005. On that day the claimant went to work but then walked off the job without telling anyone or informing anyone that she was quitting. The claimant did intend to quit. When she picked up her check the next day or two, December 7 or 8, 2005, the owner offered the claimant a chance to return to work but the claimant refused because of a dispute over a commission to which the claimant felt she was entitled. The claimant never mentioned at that time any problems with the vice president and general manager, Orlo Mundorf, one of the employer's witnesses. As a telemarketer, the employer's computer automatically places telephone calls for the telemarketers. They are not able to place calls themselves. These phone calls are placed to potential customers and it is up to the telemarketer to convince the customer to set up a sales appointment with a salesperson. Sometime prior to the claimant's voluntary quit, the computer dialed a number for the claimant connecting the claimant to a potential customer. The claimant convinced the customer to establish an appointment with a salesperson. However, that appointment was not kept. It is uncertain whether the appointment was not kept because the salesperson did not arrive or the customer was not present when the salesperson arrived. In any event, the customer's name was still kept in the database. Sometime thereafter, the computer for another telemarketer, Missy, called the same customer and Missy set up an appointment for a salesperson. The salesperson attended this appointment and the customer purchased siding. Missy was then entitled to a commission and received the commission. When the claimant noted that Missy got the commission she was upset, believing that she was entitled to at least part of the commission. The claimant spoke to the phone room manager, Janice DePhillips, one of the employer's witnesses, about the commission and was told that she would look into it. The claimant did not hear from her and then quit. When the claimant came back in to pick up her check on December 7 or 8, 2005 she spoke to Ms. DePhillips who told the claimant that the other telemarketer, Missy, did not want to share her commission and Ms. DePhillips did not think that Missy would have to. The claimant then left. The claimant had already quit the day or two before on December 6, 2005.

When a sale is missed by the salesperson there is supposed to be a reset for the computer so that the phone call goes back to the original telemarketer. This was not done for several weeks after the salesperson had failed to meet with the customer for the appointment set by the claimant and after the other telemarketer, Missy, had set up an appointment for the salesperson and a sale had resulted. Although the employer's computer is supposed to wait seven days before a potential customer is called a second time, the employer does recycle the names and may have done so here which then caused the computer used by the other telemarketer, Missy, to call the customer.

The claimant now testifies that she also quit because of safety matters related to Mr. Mundorf. However, the claimant testified that Mr. Mundorf had never said or done anything to the

claimant to put her in fear for her safety. The only thing the claimant could mention was some dispute between Mr. Mundorf and a co-worker. The other telemarketer, Missy, did nothing wrong when she set up the appointment with the salesperson resulting in a sale and was entitled to the commission.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(6), (13), (21), (22) 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:

(6) The claimant left as a result of an inability to work with other employees.

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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

(22) The claimant left because of a personality conflict with the supervisor.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily on December 6, 2005. 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 administrative law judge concludes that the real reason for the claimant's separation was a dispute over a commission to which the claimant believed she was entitled. The claimant testified that this "all" started as a result of the commission. The administrative law judge further concludes that the claimant was not entitled to the commission. The sale of the siding occurred pursuant to a telephone call made by the computer of a co-worker, Missy. This triggers the commission. It may be that the

claimant had previously had her computer call that customer and the claimant had set up an appointment but that appointment never occurred and no sale was made. The claimant was upset because she did not immediately receive a "reset" to allow the claimant to call the customer back. The claimant's "reset" was delayed until the other telemarketer, Missy, had made the appointment for the salesperson and the sale had resulted. However, there is no evidence that anyone was at fault for the delay in the "reset." The claimant did not make the sale appointment that resulted in the sale; Missy did. The administrative law judge must conclude that the claimant was not entitled to the commission and further that the claimant was aware that she was not entitled to the commission. The administrative law judge understands that the claimant may be upset because of the circumstances surrounding this matter but nevertheless must conclude that the claimant's failure to get a commission was not good cause attributable to the employer. Leaving work voluntarily because of a dissatisfaction with wages but knowing the rate of pay when hired is not good cause attributable to the employer. There is also some evidence that the claimant was dissatisfied with the work environment but this is also not good cause attributable to the employer.

The claimant now testifies that she also quit because of safety concerns related to Orlo Mundorf, Vice President and General Manager and one of the employer's witnesses. However, even the claimant finally conceded that Mr. Mundorf had never said or done anything to her to cause her to believe that her safety was at risk. The claimant could merely refer to an example of where Mr. Mundorf and a co-worker had some kind of incident. However, there is no evidence that this was related to the claimant or even endangered the claimant's safety. The claimant did not demonstrate by a preponderance of the evidence that her safety was threatened or that she was entitled to the commission discussed above and therefore 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. It appears that the claimant may have left work because of an inability to work with other employees or because of a personality conflict with her supervisor but this is not good cause attributable to the employer. There was evidence that the claimant had expressed concerns about the commission to the employer but never said anything about her safety concerns. If the claimant legitimately had safety concerns, the claimant did not give the employer a reasonable opportunity to address those concerns.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily on December 6, 2005, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, she requalifies for such benefits.

DECISION:

The representative's decision of December 28, 2005, reference 01, is affirmed. The claimant, Antonia M. Reynolds, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

kkf/kjf