

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNETTE R STARK
Claimant

APPEAL NO. 07A-UI-07664-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNICATIONS DATA SERVICE INC
Employer

**OC: 04/22/07 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 1, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 27, 2007. Claimant participated. Employer participated through Sharon Kroger, Jill Murtaugh, and Susanne Rassmussen.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time data entry clerk from January 24, 1994 until June 29, 2007. She was laid off due to a lack of work on January 10, 2007 and was recalled to work in March 2007 for two and one-half weeks until March 21, 2007, when she was laid off indefinitely. The employer's policy allows retirement after ten years of service and at age 62 or above. The policy governing layoffs and continuation of health insurance allows a laid off employee to continue to pay for the health insurance at the company rate for three months during a lay off period. If that individual is not recalled at the end of three months, their employment is terminated and they are eligible for COBRA continuation coverage and are eligible to reapply for work. The last day for claimant to either return to work, retire, or be terminated, was set at June 29, 2007. On May 7, 2007, claimant initiated communication with Murtaugh, telling her she wanted to retire to spend time with her grandchildren. Claimant went to the employer's premises to give blood and handle the retirement paperwork during one trip and she was taken off the recall list at that time. Had claimant not expressed her intent to retire, she would have remained on the recall list and likely would have been recalled to work with others in June, since the recall is based upon performance and claimant had no problems with her work performance.

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 § 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(24) 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 § 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 § 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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Claimant's early decision to retire because she assumed she would not be recalled to work was not a good-cause reasons attributable to the employer for leaving the employment. Benefits are denied.

DECISION:

The August 1, 2007, reference 01, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw