

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

DEBORAH R LOMBARD  
5 EAGLE DR  
GRINNELL IA 50112

VERIZON CORP SERVICES GROUP INC  
c/o JON JAY ASSOCIATES INC  
PO BOX 182523  
COLUMBUS OH 43218

Appeal Number: 04A-UI-01621-B4T  
OC: 01/11/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Deborah R. Lombard appealed from an unemployment insurance decision dated February 13, 2004, reference 01, that held, in effect, the claimant voluntarily left her employment with Verizon Corporate Services Group Inc., on November 22, 2003 without good cause attributable to the employer. Unemployment insurance benefits were denied.

A telephone conference hearing was scheduled and held on March 4, 2004 pursuant to due notice. Deborah R. Lombard participated. Gloria Meier was available but did not participate as a witness.

Gwet Thomas, Supervisor of Employer Services, participated on behalf of Verizon Corporation Services Group, Inc. Official notice was taken of the unemployment insurance decision dated February 13, 2004, reference 01, together with the pages attached thereto (5 pages in all). Claimant's Exhibit A and Employer's Exhibit 1 were admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Deborah R. Lombard was employed with Verizon Corporate Services Group, Inc., from July 26, 1999 through November 21, 2003 as an analyst. The claimant also provided training classes and was engaged in billing.

Management at Verizon made a determination to notify all employees by a letter dated October 1, 2003 regarding pension enhancement and a severance program that was being offered.

The claimant, as well as other employees, was offered early retirement, which included a severance payment program.

The voluntary separation program is explained in detail by pages 5, 6, and 7 attached to Exhibit A, admitted into evidence.

The termination program was entirely voluntary and the claimant was notified on several occasions that it was voluntary and as well was offered an opportunity to withdraw her separation agreement in December 2003. An explanation of management's termination regarding the hearing held in this matter was prepared in writing and submitted by the employer as Exhibit 2 admitted into evidence.

The claimant's acceptance of the retirement program was purely voluntary.

Employees were not notified that anyone would be discharged or separated from their present positions and work was available to the claimant as well as others provided she did not accept the retirement program.

The claimant did accept the retirement program and received the benefits promised by the employer, which included severance pay for nine weeks totaling \$20,940.00.

The claimant filed an initial claim for benefits having an effective date of January 11, 2004. The claimant reported vacation pay in the amount of \$999.00 for each of the two benefit weeks ending January 24, 2004. The claimant did not receive benefits following the effective date of her claim.

During the tenure of the claimant's employment, there were no warnings that the claimant's job was in jeopardy on any occasion for any reason.

#### REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (7) provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

- (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.25(24), (27) provides:

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

- (27) The claimant left rather than perform the assigned work as instructed.

The evidence in the record does not establish that the claimant committed a deliberate act or omission, which would constitute misconduct and the claimant, was not discharged from her employment for any reason by the employer.

Work was available to the claimant had she chosen to remain in her employment and perform the work that was assigned to her.

The evidence does establish that the claimant intended to sever her relationship as an employee and accept retirement rather than performing the assigned work that was available to her. The claimant was given every opportunity to withdraw her request for retirement and her acceptance of the severance pay that has been promised to her. The claimant clearly exercised her opportunity to leave her employment without good cause attributable to the employer within the intent and meaning of Iowa Code Section 96.5-1.

The claimant has received no benefits since filing her claim.

**DECISION:**

The unemployment insurance decision dated February 13, 2004, reference 01, is affirmed. Deborah R. Lombard is not eligible to receive unemployment insurance benefits and the employer's account will not be charged. The record establishes that the claimant voluntarily left her employment with Verizon Corporate Services Group Inc., on November 22, 2003, without good cause attributable to the employer and benefits are denied until such time as she has requalified under the provisions of the Iowa Employment Security law.

kjf/b