

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

BARBARA J DAVIS
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BARNES CITY IA 50027

VERIZON CORP SERVICES GROUP INC
c/o JON-JAY ASSOCIATES INC
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 04A-UI-01152-RT
OC: 12-28-03 R: 03
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, Barbara J. Davis, filed a timely appeal from an unemployment insurance decision dated January 29, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on February 24, 2004 with the claimant participating. Gwet Thomas, Supervisor of Employee Services, participated in the hearing for the employer, Verizon Corporation Services Group, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Claimant's Exhibit A was admitted into evidence.

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 analyst billing processor from October 16, 2000 until she voluntarily quit on November 21, 2003. The claimant voluntarily quit on that day to accept from the employer a voluntary reduction in force package. For all employees who would voluntarily quit, the employer promised to pay a bonus of \$15,000.00; two weeks of severance pay for each year worked, which for the claimant would be seven weeks of severance pay, and an incentive check which is yet to be paid. Further, the employer agreed to provide a five percent pension increase and to continue medical insurance for some period of time. Other agreements are set out in Claimant's Exhibit A. The claimant elected to voluntarily accept this package and quit effective November 21, 2003, which was her last day of work. The claimant received the \$15,000.00 bonus and the seven weeks of severance pay. If the claimant had not accepted this voluntary reduction in force package, continued work was available to her. The claimant was not facing an imminent layoff and was not told that she would, in fact, be laid off. The claimant did not seek other positions from the employer. There was some possibility, but perhaps remote, that the claimant could be rehired by the employer later. No one asked the claimant to leave or forced the claimant to take the voluntary reduction in force package. This was a personal decision by the claimant made by herself to accept the package and quit. In regards to unemployment insurance benefits, the employer merely told the employees that they would be subject to the various laws applicable thereto.

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 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.

871 IAC 24.25(24) provides:

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

The parties concede that the claimant left her employment voluntarily. 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 only reason the claimant left her employment was to accept the employer's offered voluntary reduction in force package. There is no 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. There is also no evidence that the claimant was facing an imminent layoff or was told that she would be laid off at a particular time. In fact, both parties agree that continuing work was available to the claimant. There was no evidence that the claimant had been asked to leave or that she was forced to accept the voluntary reduction in force package or that she would lose her job if she did not or that she would be laid off for a lack of work if she did not. Rather, the evidence establishes that the claimant made her own personal decision to accept the voluntary reduction in force package. The administrative law judge likens this to a situation in which the claimant leaves work to accept retirement when she could have continued working. This is not good cause attributable to the employer. There is also no evidence that the claimant left her employment in lieu of exercising the right to bump or oust a fellow employee with less seniority and, therefore, would not be entitled to unemployment insurance benefits under 871 IAC 24.26(27).

Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily 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 January 29, 2004, reference 01, is affirmed. The claimant, Barbara J. Davis, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

tjc/b