

**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**

**MIKAELA D DENLEY
2012 AVE F
COUNCIL BLUFFS IA 51501**

**COMMUNICATIONS DATA SERVICE INC
ATTN HUMAN RESOURCES
PO BOX 671
DES MOINES IA 50303-0671**

**Appeal Number: 05A-UI-11279-RT
OC: 10-16-05 R: 01
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, Mikaela D. Denley, filed a timely appeal from an unemployment insurance decision dated October 31, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on November 17, 2005, with the claimant participating. Amanda Johnson was available to testify for the claimant but not called because her testimony would have been repetitive and unnecessary and some of it irrelevant. Sharon Kroger, Human Resources and Senior Administrative Manager, participated in the hearing for the employer, Communications Data Service, Inc. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full time customer service representative from August 9, 2004 until she voluntarily quit effective April 7, 2005. On April 7, 2005, the claimant called someone at the employer's and told the person that she was quitting. The next day, April 8, 2005, the claimant went into the employer's location and prepared a voluntary resignation form as shown at Department Exhibit One indicating that she was quitting voluntarily because her fiancé got a job in Omaha and she was staying home with the kids. The claimant's fiancé did get a job in Omaha and eventually the claimant moved to Omaha.

At the hearing the claimant also stated that she quit because on or about March 10, 2005 she went to her eye doctor and her eyes were dilated and the doctor indicated that she could not work on the computer. The claimant called the employer and was told that she needed to come in to work or she would be terminated. The claimant came to work but did only work as she was able to do and was not held responsible for any errors or other problems associated with her work that day. The claimant did not quit after that incident because she needed to continue her employment. The claimant also testified at the hearing that when she returned from a pregnancy leave on or about January 24, 2005 that she was given a final written notice concerning her attendance. The claimant had some attendance problems. The absences giving rise to the final written notice were absences due to family illness and unrelated to her pregnancy. The claimant did not qualify for Family Medical Leave but the employer nevertheless gave the claimant time off for her pregnancy and did not count those absences against her. The claimant testified that she felt that the warning for attendance should have been given to her before she took the pregnancy leave and not after. The claimant did not quit after this incident because she needed the job. Pursuant to her claim for unemployment insurance benefits filed effective October 16, 2005, the claimant has received no unemployment insurance benefits. The records indicate that the claimant is disqualified as a result of a voluntarily quit. Workforce Development records also indicate that the claimant has been approved for department approved training from October 22, 2005 to October 21, 2006. The claimant is appropriately attending her training.

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(2), (10), (28) 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:

- (2) The claimant moved to a different locality.
- (10) The claimant left employment to accompany the spouse to a new locality.
- (28) The claimant left after being reprimanded.

The parties agree, and the administrative law judge concludes, that the claimant voluntarily left her employment effective April 7, 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 claimant testified that the main reason for her quit was that her fiancé was looking for a job in Omaha and found one and she quit to accompany him to Omaha. Leaving work voluntarily to move to a different locality or to accompany a spouse to a new locality is not good cause attributable to the employer. In the hearing the claimant testified that she left the employment also because she was required to come to work after having seen an eye doctor and having her eyes dilated. The claimant's eye doctor told the claimant, and left a statement for the employer, that the claimant should not work at the computer. The claimant called the employer asking for the day off and the employer indicated the claimant needed to come to work or she could be terminated. The claimant had had prior attendance problems. The claimant went to work and did work as she was able and suffered no repercussions or reprimands for any errors or other mistakes made during this day. This occurred on March 10, 2005 and the claimant did not quit at that time. The administrative law judge does not believe that this motivated the claimant's quit. In Department Exhibit One the claimant states in writing that her reason for her resignation was that her fiancé got a job in Omaha and she was staying home with the kids. However, even assuming that the incident on March 10, 2005, was part of the reason for her quit the administrative law judge does not believe that this incident makes her working conditions unsafe, unlawful, intolerable or detrimental nor does it subject the claimant to a substantial change in her contract of hire. There is really no evidence that the claimant was forced to do anything at work that would cause her health problems, but was merely told to report to work, which she did, and she worked that day. The claimant suffered no repercussions for any work she did that day.

The claimant also testified that she quit because when she returned from maternity leave on or about January 21, 2005 that she was given a written final warning for her attendance. The final written warning was not for her pregnancy leave or maternity leave but rather for other absences having to do with family illness and were unrelated to her pregnancy. The evidence establishes that the claimant did not qualify for FMLA, but, nevertheless, the employer gave the claimant time off for her pregnancy. The claimant later testified that she simply felt that the warning should have been given to her before her pregnancy leave and not after. The administrative law judge concludes that this did not motivate the claimant to quit, and even if it had, this does not make the claimant's working conditions unsafe, unlawful, intolerable or

detrimental nor does it subject the claimant to a substantial change in her contract of hire. At most, it appears that the claimant was unhappy with the reprimand but leaving work voluntarily after being reprimanded is not good cause attributable to the employer.

Although the claimant did express some concerns about the incident on March 10, 2005, there is no evidence that the claimant ever specifically threatened or indicated an intention to quit due to any problem she was having at work. The claimant did not provide the employer a reasonable opportunity to address any of the concerns the claimant had about her employment. 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 October 31, 2005, reference 01, is affirmed. The claimant, Mikaela D. Denley, 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/kjw