

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 L EATWELL
5201 SW 9TH ST APT 58
DES MOINES IA 50315

DATAVISION INC
PO BOX K-9
CARLISLE IA 50047

Appeal Number: 05A-UI-11956-RT
OC: 05-29-05 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, Deborah L. Eatwell, filed a timely appeal from an unemployment insurance decision dated November 14, 2005, reference 04, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on December 12, 2005, with the claimant participating. Addison Zugg, Vice President of Administration; Mary Bruscher, Production Manager; and John Spinner, General Manager/Human Resources Director; participated in the hearing for the employer, Datavision, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department of 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, the administrative law judge finds: The claimant was employed by the employer as a full time medical claims keyer from September 26, 2005 until she voluntarily quit effective October 24, 2005. The claimant began as a temporary worker for the employer on July 5, 2005. The claimant's last day of work was October 14, 2005 and she was absent thereafter for personal illness but did notify the employer. On Friday, October 21, 2005, and again on Monday, October 24, 2005, the claimant attempted to call Mary Bruscher, Production Manager and one of the employer's witnesses, to inform Ms. Bruscher that she was quitting. The claimant could not reach Ms. Bruscher so she left a voicemail for Ms. Bruscher informing her that she was quitting because the job was not a proper fit for her. The next day the claimant went into the employer's location and turned in her identification badge and signed a separation paper. The claimant gave the separation paper to John Spinner, General Manager/Human Resources Director. Neither in the voicemail message or in the signed separation paper did the claimant indicate any other reasons for her quit other than the job was just not a proper fit for her.

The claimant now testifies that she quit because she felt pressure to increase her numbers. A production report is prepared every two weeks showing the employees all of their production figures. The claimant did approach Ms. Bruscher about her numbers but Ms. Bruscher never approached the claimant about her lack of numbers or the need to increase her numbers. Ms. Bruscher did have two meetings with the claimant as she did with all of the other employees to explain the reporting system. Ms. Bruscher attempted to encourage the claimant to improve her numbers. At no time did Ms. Bruscher or anyone else tell the claimant that she was fired or discharged or would be imminently fired or discharged. Ms. Bruscher did tell the claimant that the job was not for everyone. The claimant also testified that the work environment was distracting with background noise but the evidence establishes that the environment was consistent with that of an environment where employees are typing or "keying" into a computer. The claimant had been working at the employer's as a temp worker for two months before she was hired permanently and was familiar with the environment. The claimant could wear headphones but apparently the claimant felt this was distracting too. The claimant never expressed any concerns to the employer, at least to anyone in a position of authority, about the distracting work environment but did express concerns about her numbers but the response was assistance to the claimant to increase her numbers. The claimant had only been a regular full time employee with the employer for less than a month before her quit. Pursuant to her claim for unemployment insurance benefits filed effective May 29, 2005 and reopened effective October 16, 2005, the claimant has received no unemployment insurance benefits but Workforce Development records show that the claimant is overpaid unemployment insurance benefits in the amount of \$942.97 from 2004.

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.

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(21), (33) 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:

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

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily on October 24, 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. At the time that the claimant left her voluntary quit telephone message and at the time that she submitted a signed separation paper and at fact-finding the claimant merely stated that she quit because the job was not a proper fit.

Now, the claimant testifies that she felt pressure to increase her numbers and that if she did not increase her numbers she thought she would be discharged. However, even the claimant conceded that she had never been told that she was going to be discharged or fired or that discharge or firing was imminent. The claimant testified that she was repeatedly pushed to increase her numbers by the employer's witness, Mary Bruscher, Production Manager, but Ms. Bruscher credibly testified that she never approached the claimant about her production or the production report which comes out every two weeks but rather the claimant would approach her. Ms. Bruscher did concede that on two occasions she did talk to the claimant, as she did to all the other employees, about the reporting system. Ms. Bruscher credibly testified that she was attempting to help the claimant improve her numbers but that she was not threatening the claimant if her numbers did not increase.

The claimant also testified that she quit because the work environment was distracting including background noise. However, the evidence establishes that the noise was consistent with that

of an environment where "keying" or typing into a computer was prevalent. The administrative law judge is constrained to conclude that the claimant has not demonstrated by a preponderance of the evidence that her working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. What convinces the administrative law judge of this result or conclusion is that the claimant had been a temp worker for at least two months before being hired as a regular full time employee of the employer. During this period of time the claimant had an opportunity to observe both the work environment and the job requirements and expectations. Accordingly, the administrative law judge is constrained to conclude that the claimant left her employment voluntarily because of a dissatisfaction with the work environment and because she felt that her job performance was not to the satisfaction of the employer but the employer had not requested the claimant to leave and continued work was available and these two reasons are not good cause attributable to the employer for a voluntary quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily effective October 24, 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 November 14, 2005, reference 04, is affirmed. The claimant, Deborah L. Eatwell, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she voluntarily left her employment without good cause attributable to the employer. Workforce Development records show that the claimant is presently overpaid unemployment insurance benefits in the amount of \$942.97 from 2004.

kkf/kjf