

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

CHRISTINE M MORGAN
206 E 13TH ST
MALVERN IA 51551

ECOMETRY CORPORATION
1615 S CONGRESS AVE
DELRAY BEACH FL 33445

Appeal Number: 04A-UI-11040-S2T
OC: 09/19/04 R: 01
Claimant: Appellant (2)

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 Quit

STATEMENT OF THE CASE:

Christine Morgan (claimant) appealed a representative's October 7, 2004 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Ecometry Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 4, 2004. The claimant participated personally. The employer provided a telephone number for the hearing. At the time the employer provided the number it was told it should notify the appeal section if it had not received a telephone call within five minutes of the start of the hearing. The administrative law judge telephoned the employer and received the employer's voice mail. The administrative law judge dialed "0" and was connected to an

operator who paged the employer. The operator told the administrative law judge that the employer did not respond to the page. The operator transferred the administrative law judge back to the employer's voice mail where the administrative law judge left a voice message. The employer did not participate in the hearing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 25, 1999, as a full-time senior consultant. She was to work at home half the time and travel the other half of the time. She was to be compensated \$200.00 per week for each week she was traveling. In addition, she was to receive an additional \$100.00 for the first week of travel. In January 2004, the claimant's travel time began to increase and the claimant's compensation was cut in half. In February 2004, the claimant complained to her supervisor about the change in her compensation and schedule. The supervisor quit work in April 2004, without addressing the problem. By June 2004, the claimant was traveling three or four weeks per month. She advised her new supervisor that she was going to quit because increasing demands of the job made her situation intolerable. The supervisor told her he would find a remedy to the situation because he did not want the claimant to quit. The claimant did not hear from the employer. On July 21, 2004, the claimant submitted her resignation.

The record closed at 8:17 a.m. on November 4, 2004. At 8:18 a.m. on November 4, 2004, the employer called regarding the hearing. The employer did not make himself available at the time of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The employer called the Appeals Section for the November 4, 2004, hearing after the hearing had been closed. Although the employer intended to participate in the hearing, the employer failed to make himself available for the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. Intent alone is not sufficient. An intent must be accompanied by an overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the case of an appeal hearing, that overt act is to provide a telephone number where the party may be contacted. The employer did not do this and therefore has not established good cause to reopen the hearing. The employer's request to reopen the hearing is denied.

The next issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that she intends to quit employment unless the conditions are corrected. The employer must be allowed a chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant informed the employer of the working conditions and that she intended to quit if the conditions were not corrected. She gave the employer time to correct the situation. The claimant provided the employer with plenty of notice. The claimant left work with good cause attributable to the employer and, therefore, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 7, 2004 decision (reference 03) is reversed. The claimant voluntarily left work with good cause attributable to the employer. Benefits are allowed provided the claimant is otherwise eligible.

bas/kjf