

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JENNIFER A MCCARL**  
Claimant

**APPEAL NO. 09A-UI-15313-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 08/30/09**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 5, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 12, 2009. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Jennifer McCarl.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a collector for Wells Fargo Bank. She started working for the employer in May 2007. On May 30, 2009, the claimant was taken off work by her physician for painful bone spurs and depression. The claimant applied for leave under the Family Medical Leave Act (FMLA). She was informed at some point that her physician had failed to send in the requisite documentation and the claimant asked her physician to refax the information to the employer. The claimant also spoke to her supervisor, Lee Smith, at some time while she was off work and was informed that he was not putting in any request for benefits. On August 28, 2009, the claimant called her employer to say that she would be returning to work on August 31, 2009. She spoke to someone in human resources and was told that she did not have a job. She talked to her supervisor on August 31, 2009, and all he said was that her things would be sent to her. She then received a letter dated September 1, 2009, saying that she did not submit the necessary paperwork for her FMLA leave and that she was terminated.

**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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

This case presents several difficulties because the claimant did not submit any written evidence, such as doctor's reports to substantiate her claim that she was off work or that she had been released to return to work by her physician. She did not know when she submitted the FMLA paperwork and could not say when she spoke to her supervisor and was informed that he was not turning in any request for benefits, such as short-term disability. The employer elected not to participate in the hearing and it is unknown exactly when and why the claimant's employment was ended.

What can be reasonably concluded from the claimant's testimony is that she did not intend to sever the employment relationship and wanted to return to work after she was released to return to work by her physician. She made an offer to return to work and was told that there was no work available for her. Given that un rebutted testimony, the administrative law judge concludes that the claimant did not voluntarily quit her job. There is no evidence of misconduct to justify a termination. Accordingly, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated October 5, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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