

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS G MALONE
Claimant

APPEAL NO. 07A-UI-07405-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07/01/07 R: 02
Claimant: Respondent (2)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated July 23, 2007, reference 01. The decision allowed benefits to the claimant, Curtis Malone. After due notice was issued, a hearing was held by telephone conference call on August 16, 2007. The claimant participated on his own behalf. The employer participated by Business Systems Consultant Manager Blair Swartz and Assistant Vice President Lisa Meinders.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Curtis Malone was employed by Wells Fargo from July 7, 2003 until July 2, 2007. At the time of separation he was a full-time business systems consultant. He had transferred into that department December 11, 2006, and almost immediately problems arose regarding his performance.

He was given many verbal coachings, but his performance did not improve. On June 21, 2007, he was given a formal written warning covering several subjects. Too much time was spent on personal phone calls and on the computer with non-work-related activities, and not enough was spent on “shadowing” other employees to learn the job better. He was not following instructions regarding his scheduled work hours, not attending meetings, and not completing the tasks he was assigned. There was some problem with absenteeism, as he chose to accompany his wife to appointments with her doctor and would be gone for more time than had been approved.

The next day the claimant submitted a written resignation to Business Systems Consultant Manager Blair Swartz, effective immediately. She asked him to think about his decision because the employer felt he had potential to be a good employee and wanted to retain him. Later that day he submitted a second resignation effective July 2, 2007.

Curtis Malone has received unemployment benefits since filing a claim with an effective date of July 1, 2007.

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.

871 IAC 24.25(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:

(28) The claimant left after being reprimanded.

The claimant quit the day after he had been given a formal written warning regarding many aspects of his work performance. He felt this would jeopardize his chances of getting another job within Wells Fargo and instead of improving his performance, he elected to resign. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer.

The other issues the claimant stated also do not constitute good cause attributable to the employer. He felt he should not be required to work 8:00 a.m. to 5:00 p.m., which were the core business hours for the department, but wanted to continue with the 7:30 a.m. to 4:30 p.m. schedule. But he had been told at the time of hire his schedule would be determined by the needs of the business and the difference of 30 minutes does not constitute a substantial change in his work shift. He also felt he was not being given enough work to do, although he did not always contact one of his supervisors or managers for more work and did not always complete the work he would be given. He also felt he should have been paid for two weeks of vacation he took, although he did not want to take any vacation time to cover it. The employer had never agreed to this.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 23, 2007, reference 01, is reversed. Curtis Malone is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,231.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw