

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ATHENA ANDERSON
Claimant

APPEAL NO. 17A-UI-02391-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 02/05/17
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 23, 2017, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer account could be charged for benefits. After due notice was issued, a hearing was commenced on March 29, continued on March 30, and concluded on April 10, 2017. Ms. Anderson participated. Lucie Hengen-Reed of Barnett Associates represented the employer and presented testimony through Stacia Andrew and Jeremy Erickson. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, A through F and Department Exhibit D-1 into evidence.

ISSUES:

Whether Ms. Anderson's voluntary quit was for good cause attributable to the employer.

Whether Ms. Anderson has been overpaid benefits.

Whether Ms. Anderson must repay benefits.

Whether the employer's account may be assessed for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Athena Anderson commenced her full-time employment with Wells Fargo Bank North America in 2013 and voluntarily quit the employment on February 7, 2017. Ms. Anderson began the employment as a Quality Manager 1 and was a Quality Manager 2 at the time she quit the employment. Ms. Anderson supervised 10 Quality Analysts. In June 2016, Manager Stacia Andrew became Ms. Anderson's immediate supervisor. Manager Jeremy Erickson also had supervisory authority over Ms. Anderson's work. Ms. Anderson left the employment because she perceived Ms. Andrew's exercise of supervisor authority and Mr. Erickson's exercise of supervisory authority as harassment and bullying. Ms. Anderson lacked the interpersonal skills and

organizational skills to successfully perform her Quality Manager 2 duties. When Ms. Andrew and Mr. Erickson provided reasonable and constructive feedback and held Ms. Anderson accountable for performing her duties, it was this feedback and supervision that Ms. Anderson misinterpreted as harassment. In one instance, Ms. Anderson misinterpreted a light-hearted social interaction at the end of a conference as demeaning and humiliating. Ms. Anderson filed complaints with the employer's human resources department regarding Ms. Andrew and Mr. Erickson. Those complaints were investigated and deemed to be without merit. Ms. Anderson asserted during the employment that she is autistic. A mental health professional has not diagnosed Ms. Anderson with autism. Instead, a nurse practitioner has concluded that Ms. Anderson is autistic without referring her for evaluation by a qualified mental health professional. Ms. Andrew attempted to accommodate Ms. Anderson's work style. The employer invited Ms. Anderson to submit appropriate documentation to the employer regarding need for a medically-based or mental health-based accommodation, but Ms. Anderson did not do that.

The final event that triggered Ms. Anderson's quit concerned Ms. Anderson's February 1, 2017 request to take two weeks off, beginning February 6, 2017. Ms. Andrew approved the time-off request. Ms. Anderson decided she had to leave the employment after she spend February 6 and 7 getting caught on her manager duties before commencing her time off. On February 7, 2017, Ms. Anderson sent an email to Ms. Andrew giving notice of her quit. The quit was to be effective immediately.

Following her February 7, 2017 separation from the employment, Ms. Anderson returned to Wells Fargo on March 27, 2017 to perform work in a different position.

Ms. Anderson established a claim for unemployment insurance benefits that was effective February 5, 2017. Ms. Anderson received \$2,911.00 in benefits for the seven-week period of February 5, 2017 through March 25, 2017.

On February 21, 2017, a Workforce Development claims deputy held a fact-finding interview to address Ms. Anderson's February 7, 2017 separation from the employment. Ms. Anderson participated in the fact-finding interview. The employer had appropriate notice of the fact-finding interview through its representative, Barnett Associates. The claims deputy attempted to reach the employer's representative for the fact-finding interview, but had to leave a message. Neither the employer nor Barnett Associates participated in the fact-finding interview. Ms. Anderson provided a statement at the fact-finding interview consistent with her perception of matters, but without demonstrating an intention to mislead or commit fraud.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(21) 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:

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

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

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.

After a lengthy hearing during which Ms. Anderson catalogued her complaints with Ms. Andrew and Mr. Erickson, it became rather evident that Ms. Anderson's perception of the matters in question is substantially flawed, skewed and unreliable. Indeed, Ms. Anderson provided testimony that was intentionally misleading. For example, Ms. Anderson asserted she had lost substantial weight as a result of stress in the employment. Subsequently testimony revealed that Ms. Anderson had made substantial changes in her diet in an effort to lose weight. Another example of Ms. Anderson's unreliable narration concerns Ms. Anderson's assertion that she was heckled and demeaned by Ms. Andrew and Mr. Erickson during a social outing. Subsequent testimony revealed there was no truth to the assertion. Rather, a gregarious group of conference attendees gave Ms. Anderson a gentle ribbing for being late for a social outing, Ms. Anderson grossly overreacted and then Ms. Andrew went out of her way to comfort Ms. Anderson. Ms. Anderson applied for and accepted a middle management position, but lacked the essential skillset to be successful in that position. When Ms. Andrew and Mr. Erickson attempted to assist her in acquiring the necessary skills, Ms. Anderson

misinterpreted those efforts as harassment. The final incident that triggered the quit provides yet another example of Ms. Anderson unreasonable and unreliable perception. Ms. Anderson decided to take an extended period, two weeks, away from work on short notice and then faulted the employer for her own decision to spend time to get caught up before she commenced her time off.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The evidence fails to establish intolerable or detrimental working conditions. The evidence indicates instead a voluntary quit for personal reasons that included dissatisfaction with the work assignment and work environment, as well as a personality conflict with supervisors. The evidence fails to establish a medical basis for the quit. Effective, February 7, 2017, Ms. Anderson is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Anderson must meet all other eligibility requirements.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later deemed ineligible for the benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Anderson received \$2,911.00 in benefits for the seven-week period of February 5, 2017 through March 25, 2017, but has been deemed ineligible for those benefits as a result of this decision. Accordingly, the \$2,911.00 in benefits is an overpayment of benefits. The employer failed to participate in the fact-finding interview. Ms. Anderson's statement at the fact-finding interview was consistent with her erroneous perception did rise to the level of fraud or willful misrepresentation. Accordingly, Ms. Anderson is not required to repay the benefits. The overpaid benefits may be assessed to the employer's account. Because Ms. Anderson has returned to employment with the employer, the employer's account will not at this juncture be relieved of liability for future benefits.

DECISION:

The February 23, 2017, reference 01, decision is reversed. The claimant voluntarily quit the employment on February 7, 2017 without good cause attributable to the employer. Effective February 7, 2017, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$2,911.00 in benefits for the seven-week period of February 5, 2017 through March 25, 2017. The claimant is not required to repay the overpaid benefits. The overpaid benefits may be assessed to the employer's account. Because the claimant has returned to employment with the employer, the employer's account will not at this juncture be relieved of liability for future benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn