

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGEL D BUTTS
Claimant

WELLS FARGO BANK NA
Employer

APPEAL 16A-UI-13252-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit because she did not like the work environment. The parties were properly notified of the hearing. A telephone hearing was held on January 5, 2017. The claimant Angel Butts participated and testified. The employer Wells Fargo Bank NA did not participate. Departments Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on October 26, 2016. The appellant received the decision and filed an appeal on October 28, 2016. Due to no fault of the claimant the appeal was not received. Within a week of learning that her appeal was never received, claimant filed a second appeal that was received on December 13, 2016.

Claimant was employed full time from April 14, 2008, until this employment ended on September 26, 2016, when she voluntarily quit. At the time of her separation claimant was working as an Executive Resolution Specialist 4.

Claimant had been working for the employer in its equity division since 2008. In July 2015 claimant decided she wanted to try something new and moved into her most recent position in the mortgage department. This position proved far more stressful than claimant had anticipated. Adding to this stress were issues in her personal life involving the deaths of her mother in January 2015 and grandmother one year later. Claimant began seeing a therapist

during this time, who suggested she try to find another position either with the employer or with an outside employer, as a majority of her stress was work-related. Claimant testified she spoke to her employer about her stress level and asked if she could apply to transfer to another position prior to her one year anniversary date in her current position. The employer generally requires individuals to stay in a position for at least a year before transferring and claimant's request was denied, though another employee in her position had previously had a similar request granted.

Claimant was able to reach her one-year anniversary date and began applying for other positions with the employer, but was not immediately hired for any of these positions. Towards the end of September 2016 claimant's immediate supervisor had a conversation with her in which she told her she needed to do better and show more initiative or risk being placed on a performance improvement plan. Claimant was not placed on a performance improvement plan or otherwise disciplined, but found her supervisor's unfair criticism to be too much to handle and therefore resigned effective immediately on September 26. Prior to resigning claimant advised the employer that if she was not transferred she would be forced to resign due to stress. Claimant was not advised by her therapist or other medical professional to quit her job.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from

charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant filed an appeal in a timely manner but, due to no fault of the claimant, it was not received. Within a week of learning that her original appeal had not been received, a second appeal was filed by the claimant. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant's separation was with good cause attributable to the employer. The administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25 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:

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

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

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant decided to resign because she found the stress of the position to be too much to bear. Specifically, claimant made the decision to resign following a conversation with her supervisor in which she felt unfairly criticized. Claimant spoke to the employer about her work related stress prior to resigning and requested a transfer, but had not been granted one at the time of her separation. Claimant spoke to her therapist about her work related stress and was advised that it might be a good idea to start looking for another position, but was not advised to resign.

Claimant has not established that her treating medical personnel advised her to quit the job, as is her burden. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The claimant's appeal is timely. The October 26, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as claimant is deemed eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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