

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA A WILSON**  
Claimant

**APPEAL NO. 15A-UI-03264-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 02/15/15**  
**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 March 2, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on February 11, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on June 3, 2015. Claimant Jessica Wilson was not available at the number she had provided for the hearing and did not participate. Steve Zaks of Barnett Associates represented the employer and presented testimony through Audra Bowers and Judy Escobar. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Four, Seven, Eight, 10, 11, 13, 15 through 19, 21 through 24, 26, 27, 28, 30, 32 and 33 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant separated from the employment for a reason that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jessica Wilson was employed by Wells Fargo Bank North America as a full-time Loan Documents Specialist 2 from 2012 and last performed work for the employer on November 10, 2014. Ms. Wilson's regular work hours were 7:00 a.m. to 3:30 p.m., Monday through Friday.

Ms. Wilson's supervisor during the last seven months of the employment was Audra Bowers, Loan Administration Manager. Ms. Wilson's separation from the employment followed an extended period of absence from the employment.

If Ms. Wilson needed to be absent, the employer's written policy required that she notify her supervisor at her desk phone prior to the scheduled start of her shift. If the supervisor did not answer, Ms. Wilson was to leave a message. Ms. Wilson was aware of the policy and followed for absences on November 12, 13, 14, 17, 18, 19, 20 and 24, when she indicated she was absent due to personal illness.

Thereafter, Ms. Wilson either did not report absences or left messages outside of normal work hours. Ms. Wilson provided late notice of her need to be absent on November 25 due to illness. On November 21, the employer had authorized intermittent FMLA for Ms. Wilson so that she could attend to her child's special needs. The employer had not authorized FMLA leave based on Ms. Wilson's personal health issues. Ms. Wilson was absent on December 1, 2 and 3 and provided proper notice. Ms. Wilson advised the employer that she would be absent due to illness on those days. Ms. Wilson was then absent on December 7, but did not notify the employer until that evening. At the same time, Ms. Wilson indicated she would be absent the next day due to illness. Ms. Wilson added that she would be absent until Wednesday or Thursday, December 10 or 11, due to illness. On the evening of Wednesday, December 10, Ms. Wilson notified the employer that she would be absent until Thursday or Friday, December 11 or 12. On December 13, Ms. Bowers attempted to reach Ms. Wilson and left a message advising that Ms. Wilson's request for a personal medical leave had been denied because Ms. Wilson had not provide the required documentation to support the need for the leave. On Monday, December 15, Ms. Wilson notified the employer prior to her shift that she would be absent that day and the next. On the evening of December 17, Ms. Wilson provided late notice that she would be absent for that day and added that she would be absent for the remainder of the week. On Sunday, December 21, Ms. Wilson notified the employer that she would be absent for the next two weeks. Ms. Wilson then made no further contact with the employer. The employer waited until February 11, 2015 before it documented a separation from the employment.

Ms. Wilson established a claim for benefits that was effective February 15, 2015. Ms. Wilson has received \$6,386.00 in benefits for the period of February 15, 2015 through June 20, 2015.

At 9:55 a.m. on February 27, 2015, a Workforce Development claims deputy attempted to hold a fact-finding interview to address Ms. Wilson's separation from the employment. Both parties had appropriate notice of the fact-finding interview, but neither side appeared for the fact-finding interview. The claims deputy attempted to reach the employer representative at its number of record, but no one answered. The claims deputy left a message regarding the purpose of the call and also stated the employer's appeal rights. At 2:40 p.m. on February 27, 2015, the employer's representative of record electronically filed the employer's protest via the SIDES system and attached additional documentation to the protest.

## **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover,

termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

Iowa Code § 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.

Workforce Development rule 817 IAC 24.26(6)(a) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer based on the claimant's failure to return to the employment or make further contact with the employer after leaving a message for the employer on December 21, 2014. The claimant did not participate in the hearing and did not present any evidence to suggest an involuntary separation from the employment or a quit for good cause attributable to the employer. The evidence fails to establish an illness that necessitated the claimant's separation

from the employment or that the separation was based on advice from a licensed and practicing physician. Because the voluntarily quit was without good cause attributable to the employer, Ms. Wilson is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$6,386.00 in benefits for the period of February 15, 2015 through June 20, 2015.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.  
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The employer did not participate in the fact-finding interview, either by having someone on the phone for the fact-finding interview or by submitting documentation for the fact-finding interview. The employer representative was not available that the telephone number of record. The employer representative had not submitted any documentation at or before the time of the fact-finding interview. The protest materials that the employer electronically submitted via the SIDES system were filed at 2:40 p.m. on February 27, 2015, more than four and a half hours after the scheduled fact-finding interview.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits. However, the employer's account will not be charged for benefits paid to the claimant for the period on or after the entry date of this decision.

**DECISION:**

The March 2, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment effective December 21, 2014 without good cause attributable to the employer. 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, provided she is otherwise eligible. The claimant was overpaid \$6,386.00 in benefits for the period of February 15, 2015 through June 20, 2015. The claimant is not required to repay the overpaid benefits. The overpaid benefits may be charged to the employer's account, based on the employer's failure to participate in the fact-finding interview. However, the employer's account will not be charged for benefits paid to the claimant for the period on or after the entry date of this decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs