

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY M CLABAUGH
Claimant

APPEAL NO. 13A-UI-03633-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

OC: 04/15/12
Claimant: Respondent (1)

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Wells Fargo Bank (employer) appealed a representative's March 18, 2013 decision (reference 04) that concluded Amy Clabaugh (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 29, 2013. The claimant participated personally. The employer was represented by John O'Fallon, Hearings Representative, and participated by Joshua Reed, Assistant Vice President.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 2, 2009, as a full-time home preservation specialist one. The claimant took Family Medical Leave from January 4 through March 1, 2012. She returned to work from March 2 through March 23, 2012. She took certified medical leave/short-term disability from March 24 through September 4, 2012. She returned and worked from September 4 through October 9, 2012. The claimant took long-term disability from October 10 through October 18, 2012. She returned to work from October 22 through November 8, 2012. She again took long-term disability from November 12, 2012, through February 6, 2013. The insurance company canceled her long-term disability as of February 6, 2013. The employer continued to consider the claimant an employee but placed her on unapproved medical leave.

The claimant's physician indicated she had recovered completely from her medical condition which left her with limited vision. The claimant's physician wrote the claimant a note on February 6, 2013, asking for work accommodations that would require the claimant time to assimilate into the equipment's use. The claimant would need to work reduced hours at the

start of using the equipment due to eye strain. The employer was unwilling to meet the claimant's accommodations and did not return her to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of her physician. The employer consented to leaving. The claimant has provided the employer with certification that she has recovered. In addition the claimant has offered her services to the employer. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to return to work without restrictions by her physician. She was released to return to work with a request for work modifications. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's March 18, 2013 decision (reference 04) is affirmed. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css