

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BARBARA L NEWBROUGH
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WEST DES MOINES IA 50265

WELLS FARGO BANK
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-06380-JTT
OC: 05/22/05 R: 02
Claimant: Appellant (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
871 IAC 24.22(2)(j) – Reemployment at the End of a Negotiated Leave of Absence

STATEMENT OF THE CASE:

Barbara Newbrough filed a timely appeal from the June 7, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 7, 2005. Ms. Newbrough participated and presented additional testimony through her sister, Mary Hiatt. Sheila Sargent represented the employer and presented additional testimony through Supervisor Val Just.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Barbara Newbrough was employed by Wells Fargo Bank as a full-time written customer service representative from February 27, 1995 until May 10, 2005, when she resigned due to her

health. Ms. Newbrough's primary duties involved responding to customers' written complaints. Ms. Newbrough last worked a shift on December 8, 2004. Between December 8, 2004 and May 9, 2005, Ms. Newbrough was engaged in an unsuccessful effort to obtain disability benefits through the employer's short-term disability provider or mental health disability provider.

The circumstances that led to Ms. Newbrough not reporting for work after December 8 centered on Ms. Newbrough's concerns about her many on-going physical and mental health problems and the employer's concerns about Ms. Newbrough's work performance. Ms. Newbrough had experienced considerable health problems dating at least since May 2002, when Ms. Newbrough's mother passed away and Ms. Newbrough shortly thereafter fell and broke her foot. At some point thereafter, Ms. Newbrough suffered a heart attack, was diagnosed with degenerative disk disease in spine, had high blood pressure that was managed with medication, and suffered from depression which was managed with antidepressant medications. In addition, Ms. Newbrough had reported in November 2004 that she had fallen at the workplace, submitted a workers' compensation claim, but was unable to obtain workers' compensation benefits after she was unable to describe how she had fallen. At the time Ms. Newbrough worked her last shift for Wells Fargo, she was interested in no longer working and interested in obtaining some form of disability benefits.

On December 8, Ms. Newbrough was also confronted with being disciplined by her supervisor for poor work performance. During a previous instance when Ms. Newbrough had been absent from work, the employer found customer complaints that Ms. Newbrough had placed in a desk drawer and had not processed. In other words, the employer had discerned that Ms. Newbrough had hidden her work, rather than completed it. Ms. Newbrough's supervisor, Val Just, met with Ms. Newbrough on December 8 to discuss the reprimand. At that time, Ms. Newbrough raised the issue of her health issues. Ms. Just referred Ms. Newbrough to the employer's "Workability" department.

Ms. Newbrough met with Consultant Susan Price, who advised Ms. Newbrough the employer would not be in the position to make Ms. Newbrough go on a leave of absence to address the performance issues. Ms. Newbrough decided to cease working and attempt to get disability benefits through the employer's short-term disability provider or through the employer's mental health disability provider. Neither provider deemed Ms. Newbrough eligible for benefits. After appealing one or more decisions denying disability benefits, Ms. Newbrough got a final answer in March 2005 that she would not be approved for disability benefits. Ms. Newbrough contacted her supervisor and advised Ms. Just that she was out of options and would be consulting with her doctor regarding whether she should return to work.

Ms. Newbrough had commenced an informal leave of absence on December 8. Ms. Newbrough was subsequently approved for leave under the Family and Medical Leave Act on December 15, 2004.

The employer apparently allowed Ms. Newbrough to continue on the leave of absence indefinitely. However, on May 9, Ms. Newbrough telephoned Ms. Just and advised that she would not be returning to the employment. Ms. Newbrough subsequently e-mailed her resignation, and the resignation was accepted on May 10, 2005. Ms. Newbrough's doctor(s) had not advised Ms. Newbrough to quit the employment. The employer continued to have work available for Ms. Newbrough.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the evidence in the record establishes that Ms. Newbrough failed to return from an approved leave of absence. It does.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence in the record establishes that Ms. Newbrough failed to return to work at the end of a negotiated leave of absence and chose instead to resign from the employment. The decision to quit was not based on the advice of a licensed and practicing physician. See 871 IAC 24.25(35).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Newbrough voluntarily quit the employment by failing to return to the employment after a negotiated leave of absence. Accordingly, Ms. Newbrough 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 then otherwise eligible.

DECISION:

The Agency representative's decision dated June 7, 2005, reference 01, is modified. The claimant voluntarily quit the employment without good cause attributable to the employer by voluntarily quitting rather than returning at the end of a negotiated leave of absence. 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.

jt/pjs