

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILIP Q CROUSE

Claimant

APPEAL NO: 18A-UI-06330-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 04/29/18

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 31, 2018, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on June 26, 2018. The claimant participated in the hearing. Andrew Schott, Loan Administration Manager II; Gayle Borst, Vice-President Loan Administration Manager; and RoxAnne Rose, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time mortgage processor IV for Wells Fargo Bank from January 29, 2012 to April 27, 2018. He voluntarily left his employment because he felt the employer was forcing him into unethical practices and retaliating against him.

The claimant filed a number of ethics complaints through the employer's corporate phone number between April 2017 and June 2017 and a human resources case was opened but the claimant does not believe any of his complaints were resolved. The human resources department spoke to Loan Administration Manager II Andrew Schott January 11, 2018, about the claimant's complaints but those investigations are confidential so Mr. Schott was unaware of the outcome and the claimant did not speak to him about practices he felt were unethical. He spoke to Mr. Schott about the data integrity policy which effectively states employees are to report any inappropriate action they observe. Employees are usually terminated if they alter information. Mr. Schott believed the claimant's complaints generally revolved around data accidentally entered incorrectly rather than intentional interference with loan numbers. Mr. Schott testified that most of the claimant's complaints regarded other internal partners in the loan process for whom the claimant had animosity and there were a "high number" of requests from other partners about the way the claimant "talked down" to them and hindered the process for customers. Due to the fact several partners expressed their concerns about the claimant's

behavior, Mr. Schott felt the claimant was the source of the problem and did not find the claimant's complaints to be valid. The claimant testified the employer told him several times that he needed to be a team player. Mr. Schott denies ever doing so in any capacity.

The claimant believed the employer retaliated against him by diminishing the number of files assigned to him. While the claimant agrees it was a slower time for the employer which would cause him to have less files, he was working on five files at the time he left rather than the 15 to 20 files he would usually be responsible for even during a slow period. The employer does not assign files to employees when they are off work on paid time off (PTO) and the claimant did not work the week of March 15, 2018. Additionally, the claimant had used more than 50 hours of PTO than he had remaining, which also contributed to his lower numbers. The "last straw" for the claimant occurred when he had a total of five files and determined it was because the employer was retaliating against him for refusing to be a "team player."

The claimant sent his notice of resignation through an email April 5, 2018, with an effective date of April 27, 2018 (Employer's Exhibit One). He stated he had "chosen to pursue other interests" (Employer's Exhibit One).

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,484.00 for the seven weeks ending June 16, 2018.

The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

While there is no doubt that errors occurred on some of the loan documents processed by the claimant's partners, the evidence presented by the claimant does not establish the employer was manipulating the loan numbers. Numbers may have been entered incorrectly and inaccurate information furnished to the partners by borrowers on occasion, but the claimant has not demonstrated the employer was deliberately using false information.

The claimant believed the employer retaliated against him by assigning him less files but admits this was a slower time for the employer. Additionally, the employer does not assign files to employees when they are out of the office and the claimant was gone frequently in 2018, including shortly before he submitted his resignation notice.

Although the administrative law judge believes the claimant sincerely feels the employer retaliated against him, the evidence does not show the employer tried to force the claimant to act unethically and retaliated against him when he expressed his concerns. Under these circumstances, the administrative law judge cannot find the claimant has met his burden of proving his leaving was due to unlawful, intolerable, or detrimental working conditions. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant.

Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

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 section 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 benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

In this case, the employer did not participate in the fact-finding interview within the meaning of the law. Consequently, the claimant’s overpayment of benefits is waived and his overpayment, in the amount of \$2,484.00 for the seven weeks ending June 16, 2018, shall be charged to the employer’s account.

DECISION:

The May 31, 2018, reference 02, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant’s overpayment of benefits is waived and his overpayment, in the amount of \$2,484.00 for the seven weeks ending June 16, 2018, shall be charged to the employer’s account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn