

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

ROBIN W BEATON
1406 FAIRWAY DR
MARSHALLTOWN IA 50158

WELLS FARGO BANK
C/o TALX UC EXPRESS
P O BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-10494-HT
OC: 08/29/04 R: 02
Claimant: Respondent (2)

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 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated September 17, 2004, reference 03. The decision allowed benefits to the claimant, Robin Beaton. After due notice was issued, a hearing was held by telephone conference call on October 19, 2004. The claimant participated on her own behalf. The employer participated by Vice President Susan Pfeil.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Robin Beaton was employed by Wells Fargo from September 8, 2003 until August 27, 2004. She was a full-time commercial real estate lender.

On June 9, 2004, the claimant was placed on a 90-day probation for work performance. Six goals were set and the documentation indicated if satisfactory improvement was not made, further disciplinary action, up to and including discharge, would result. Ms. Beaton met with Vice President Susan Pfeil twice a month to discuss her progress. Improvement was seen in June and July but at the August 25, 2004, meeting, Ms. Pfeil indicated there had been some decline in performance. She mentioned she would have to consult with her supervisors to determine what steps to take at the end of the probationary period. The options included extending the probationary period as well as discharge.

At that meeting Ms. Pfeil also notified the claimant that, due to decline in her performance, the option of working a few days a week out of the Marshalltown, Iowa office was not viable. The option had been suggested in late June or early July by Ms. Pfeil's manager as a way of alleviating the claimant's long commute. It was a suggestion unrelated to the claimant's probation or work performance and there was no guarantee this arrangement would be available.

On August 26, 2004, the claimant submitted a written resignation indicating it was in her own best interests to leave the job at that time.

Robin Beaton has received unemployment benefits since filing a claim with an effective date of August 29, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

871 IAC 24.25(33) provides:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

It appears the claimant's primary motivation to resign was her belief she would be discharged for failing to meet the performance improvement expectations from her probationary period. The employer had made no decision at that time as to how to address a failure to meet the requirements of the probation and could have chosen to merely extend the probation. However, rather than take the chance of being discharged the claimant elected to resign.

Under the provisions of the above Administrative Code section, this is not good cause attributable to the employer.

The claimant's assertion there was a change in the contract of hire is not supported by the record. The option to work in the Marshalltown office a few days a week was not a contractual agreement, but only an option which had been discussed, which was not viable due to the claimant's failure to improve her performance. The claimant knew she had to commute from Marshalltown to Des Moines for her job at the time she was hired and quitting because of the commute is also not good cause attributable to the employer under the provisions of 871 IAC 24.25(30). The claimant is disqualified.

DECISION:

The representative's decision of September 17, 2004, reference 03, is reversed. Robin Beaton is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,106.00.

bgh/b