

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEO KIRK
Claimant

APPEAL NO: 12A-UI-03728-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 03/11/12
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Leo Kirk (claimant) appealed an unemployment insurance decision dated April 5, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Wells Fargo Bank NA (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2012. The claimant did not participate but his sister, Chris Boosalis, participated on his behalf. The employer participated through Kathy Hagewood, load administration manager, and Pamela Bailey, employer representative. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 16, 2011 as a full-time mortgage interim loan documentation specialist and voluntarily quit on March 13, 2012. He quit due to what he claimed was an intolerable work environment that resulted from his supervisor's alleged breach of confidentiality. The claimant's sister said that he went to his supervisor, Kathy Hagewood, and asked to speak to her in private but she refused, saying that she was really busy and asked if they could just talk at her desk. She does not have an office but works in a cubicle. Ms. Hagewood denied this allegation and said the claimant approached her desk and merely asked if they could talk. She has a chair next to her desk so she told him to sit down. Ms. Hagewood testified that he never requested to go to a private area or she would have willingly done so.

The claimant proceeded to tell Ms. Hagewood that he has Parkinson's disease and wanted her to be aware of issues that might result from that diagnosis. He did not provide any medical documentation and did not request any accommodation as a result of his medical condition.

The claimant's sister said that the claimant said that his co-workers learned about his medical condition and always asked him about it. His sister said that the claimant believes Ms. Hagewood was responsible for his co-workers knowing about it; he either believes that she told his co-workers or that they learned about it because Ms. Hagewood refused to meet with him in private. The claimant complained to Ms. Hagewood's supervisor and they both met with him; they offered him accommodations and offered to speak with his co-workers, but he was not interested in either suggestion.

The claimant's sister said that the claimant believed Ms. Hagewood gave him more work after his disclosure. Ms. Hagewood testified that every employee in that department had more work to do because of increased business. The claimant's sister said that the claimant requested to be transferred, but the employer refused that request. Ms. Hagewood testified that the claimant called her personal cell phone several weeks after he quit and asked about transferring to a different department and she passed along that information. She confirmed that he never requested a transfer while he was working.

The claimant called in sick on March 12, 2012 and called in on March 13, 2012 to report that he would not be returning. He left a voice mail for Ms. Hagewood stating that he quit because the pressure at work was too much due to the amount of work that they were getting and that he could no longer handle people at work knowing about his personal situation.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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.

The claimant quit on March 13, 2012 due to what he felt was an intolerable working environment. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973).

The two issues that were intolerable were the increased work load and the fact that his co-workers knew that he had Parkinson's. He believed the employer was just giving him more work when the truth was that everyone in that department had more work. And, while his co-workers may have known about his medical condition, his supervisor did not disclose that information to anyone. His co-workers may have learned about it when he spoke to his supervisor in her cubicle. The claimant argues that his supervisor refused to meet in private, but the employer disputes that claim. However, even if the supervisor refused to meet in private

on that particular date, the claimant was not forced to provide his medical details to the supervisor.

Even if that was what he wanted to do, he was not forced to do so on that date and in that area. Since he knew the nature of what he was going to talk about, he could have ensured they were in a private location before disclosing such private details. He could have gone to human resources or his supervisor's boss to request a private meeting or any number of other options. If what his sister claims is accurate, that his supervisor said she was really busy and could they talk there, he could have simply said no and/or made arrangements to talk when she was not busy. The evidence provided by his sister does not establish an intolerable or detrimental work environment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and his separation cannot be attributed to the employer. Benefits are denied.

DECISION:

The unemployment insurance decision dated April 5, 2012, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw