

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KATHY L PULLIN
Claimant

APPEAL NO. 18A-UI-09203-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OCWEN LOAN SERVICING LLC
Employer

OC: 08/12/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kathy Pullin filed an appeal from the August 27, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Pullin voluntarily quit on August 10, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on September 20, 2018. Ms. Pullin participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A, B and C were received into evidence.

ISSUE:

Whether Ms. Pullin's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathy Pullin was employed by Ocwen Loan Servicing, L.L.C. as a full-time Account Analyst until August 10, 2018, when she voluntarily quit in anticipation of being disciplined for failing to perform her work duties in connection with a particular account. Ms. Pullin began her employment in 2013. In March 2016, Ms. Pullin moved from the customer care department to the Account Analyst position. From March 2017 onward, Ms. Pullin performed her Account Analyst duties in the employer's consumer ombudsman's office. Ms. Pullin's Account Analyst work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. One half of Ms. Pullin's eight-hour workday as an Account Analyst involved taking inbound customer complaint calls regarding mortgage loan issues and working to resolve those issues. Ms. Pullin spent the remainder of her work day researching mortgage loan issues and drafting letters and email messages to customers. Brook Wooldrik, Team Lead, was Ms. Pullin's immediate supervisor.

Ms. Pullin has been diagnosed with an anxiety disorder and bipolar affective disorder. Before Ms. Pullin transitioned to the Account Analyst position, the employer accommodated Ms. Pullin's request for steady work hours. The employer ordinarily assigned work hours based on

employee work performance. Ms. Pullin continued to have steady work hours after she moved into the Account Analyst. Ms. Pullin's bipolar symptoms are cyclical in nature. In 2017, the employer placed Ms. Pullin on an action plan/performance improvement plan when Ms. Pullin's work performance dipped in connection with her bipolar issues.

In May 2018, Ms. Wooldrik again placed Ms. Pullin on an action plan/performance improvement plan. Ms. Pullin was still on the performance improvement plan at the time she resigned from the employment. The terms of the action plan merely required that Ms. Pullin adhere to the employer policies and procedures applicable to Account Analyst position as she performed her duties. Those policies and procedures were contained in a computer-based "user manual." The user manual would provide such information as state-by-state property tax payment due dates, applicable government regulations, and standards for periodic communication with customers. The communication standards required that Ms. Pullin call customers every 10 days and update customer accounts every 10 days. Ms. Pullin struggled with the performance metrics applicable to her Account Analyst position.

In July 2018, Ms. Pullin requested to return to the customer care department. At the time Ms. Pullin made the request, the employer had identified a significant performance issue that involved Ms. Pullin's failure to send an acknowledgment letter to a customer within the 48-hour response period. The particular case had been assigned to Ms. Pullin a month and a half earlier. Ms. Pullin had performed no work on the case during that period. Ms. Pullin had overlooked the case. Ms. Wooldrik deferred further action on the performance issue while she and Ms. Pullin waited to see whether Ms. Pullin would be allowed to return to the customer care department. When Ms. Wooldrik notified Ms. Pullin on July 26 that there was no opening in the customer care department, she told Ms. Pullin that she would need to refer the unaddressed performance issue up the chain of command. At that time, Ms. Pullin told Ms. Wooldrik that Ms. Pullin might as well just pack her desk. Ms. Pullin asked Ms. Wooldrik whether review of the as-yet unaddressed performance issue would lead to termination of the employment. Ms. Wooldrik told Ms. Pullin that she did not know, but that the situation was "not good." Ms. Wooldrik told Ms. Pullin "friend-to-friend" that if Ms. Pullin was discharged from the employment she would not be eligible for rehire, but that if she resigned she would preserve her eligibility for rehire. Ms. Wooldrik did not tell Ms. Pullin that she would be discharged if she did not resign.

On July 30, 2018, Ms. Pullin sent an email message to Ms. Wooldrik stating that she was resigning from the employment and that her last day in the employment would be August 10, 2018. Ms. Wooldrik told Ms. Pullin that she would forward to the resignation email to the employer's human resources department. On that same day, the human resources department sent Ms. Pullin an email message stating that the human resources department had scheduled an exit interview for August 10, 2018. On August 10, 2018, Ms. Pullin met with Leslie Shafer, Human Resources Manager, for the exit interview. At that time, Ms. Pullin stated that she was leaving for medical reasons. Ms. Shafer asked Ms. Pullin whether there was something the employer could have done to accommodate Ms. Pullin's medical issues so that Ms. Pullin could continue in the employment. Ms. Pullin spoke to Ms. Shafer regarding her anxiety and bipolar issues and about how the employee ranking system in the customer care department led to her transfer from the customer care department. Ms. Pullin did not ask Ms. Wooldrik for an accommodation. Ms. Pullin's decision to leave the employment was not based on advice from a medical professional.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)d 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. 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.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record established a voluntary quit without good cause attributable to the employer. Though Ms. Pullin cites her mental health issues as the primary basis for her quit, Ms. Pullin's doctor did not advise her to leave the employment. Ms. Pullin's quit was also in anticipation of as-yet undetermined disciplinary action based on her failure to complete an assigned task. The weight of the evidence does not support a conclusion that the supervisor somehow misled Ms. Pullin into resigning from the employment. Rather, the supervisor conveyed company rehire policy and advised Ms. Pullin that the as-yet unaddressed performance issue would now need to be addressed. Ms. Pullin took four days to consider her options and then voluntarily provided her resignation notice. At the end of the two-week notice period, the employer's human resources manager met with Ms. Pullin for an exit interview and asked whether there was an accommodation the employer could provide that would allow the employment to continue. Ms. Pullin elected to resign from the employment, rather than pursue an accommodation, if needed, that would allow her to continue in the employment. Because the evidence establishes a voluntary quit without good cause attributable to the employer, Ms. Pullin is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Pullin must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The August 27, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment on August 10, 2018 without good cause attributable to the employer. 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. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs