

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

AMANDA M WILLIAMS
307 – 11TH ST SE
ALTOONA IA 50009

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

Appeal Number: 05A-UI-03624-DT
OC: 02/20/05 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 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wells Fargo Bank (employer) appealed a representative's March 28, 2005 decision (reference 1) that concluded Amanda M. Williams (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2005. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Sharon Whittington appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 12, 2004. She worked full time as a securities administrative services analyst in the employer's West Des Moines, Iowa office. On February 24, 2005, she tendered her two-week notice of resignation. Her last day would have been March 11, 2005. She gave her notice because she was upset that the employer had not allowed her to stay all day down at the employer's downtown office at which the claimant had been spending about two hours each morning since approximately October 2004. In November 2004 the claimant had even offered to work at the downtown office every week instead of alternating with another analyst. After having her request to work all day at the downtown office on February 24, 2005, the claimant confronted the employer and demanded that she then not be sent to work downtown at all, effective immediately. The employer agreed to replace the claimant on the downtown work duty, but indicated that the claimant would still have to go to the downtown office for two or three more weeks while someone else was trained. The claimant refused to continue going to the downtown office during the training period, and then offered her two-week notice. Ms. Whittington accepted the resignation, and indicated she would get the documentation for the claimant to fill in from human resources.

Ms. Whittington returned with the paperwork, at which time the claimant sought to rescind her resignation. The employer declined to allow the claimant to rescind her resignation, and, in fact, informed the claimant that it had determined to waive the two-week notice and directed the claimant to leave immediately, due the financial sensitivity of the work the claimant would otherwise be responsible for during her notice period. The employer paid the claimant her regular wages through March 11, 2005.

The claimant established a claim for unemployment insurance benefits effective February 20, 2005. The claimant received no unemployment insurance benefits for the period from February 20, 2005 through March 12, 2005 due to the receipt of wages in excess of her eligibility allowance. The claimant has received unemployment insurance benefits after the separation from employment and after March 13, 2005 in the amount of \$293.00.

REASONING AND CONCLUSIONS OF LAW:

There are two separation incidents that must be reviewed in this case. The first created an issue of whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 provides that, 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. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The employer accepted the resignation. Where an employee has attempted to withdraw a resignation before leaving employment, the employer's refusal to accept the withdrawal does not render the separation involuntary. Langley v. Employment Appeal Board, 490 N.W.2d 300, 303 (Iowa App. 1992). Neither is the employer required to show that it has already taken steps to replace the employee before the employee attempted to withdraw the resignation. Langley, id. Rather, an attempt to withdraw the resignation prior to the effective date of the resignation is treated as a request for reemployment, that the employer may choose to accept; the employer is not required to accept the employee's request to withdraw the resignation, but rather, the employer is entitled to rely on the employee's notice of resignation. Langley, id. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant has not satisfied that burden. Benefits are denied effective March 13, 2005.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, the employer effectively discharged the claimant by waiving her two-week notice for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The reason cited by the employer for discharging the claimant was the potential security risk of maintaining the claimant's employment during her notice period. This does not establish misconduct within the meaning of the statute, and the claimant is not disqualified from benefits for the period between the discharge and the date she was intending to quit, if she had otherwise been eligible. However, due to the receipt of wages during the notice period, she still was not eligible for benefits during that time.

DECISION:

The representative's March 28, 2005 decision (reference 1) is reversed. The claimant voluntarily quit without good cause attributable to the employer effective March 11, 2005. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons, but the claimant was not otherwise eligible during that period. As of March 13, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times hr weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$293.00.

ld/pjs