

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLI M ROSS**  
Claimant

**APPEAL NO: 14A-UI-12329-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 11/02/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 20, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit this employment for reasons that do not qualify her to receive benefits. Before the scheduled December 17 hearing, the employer faxed a letter indicating the employer was not going to participate at the hearing. The claimant participated at the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

After working about three months as a temporary employee, the employer hired the claimant in June or July 2010 as a full-time document processor for private mortgages. During the claimant's employment, she did not receive a poor performance evaluation. The claimant's supervisor had been supervising her for about 18 months.

The claimant and one of the bankers she worked for had a personality conflict. While the claimant could have been assigned to another banker before September 2014, this did not happen. After the claimant met the employer's goals in June and July, the number of loans she closed in August was down because she worked with new construction loans that would not be completed until the following year.

In late August or early September 2014, the claimant's supervisor asked her if this job was for the claimant because her numbers were down. The claimant's numbers were down because of the loans she had been assigned to close. After the claimant learned she would be put on a performance improvement plan and would receive a poor performance evaluation if she stayed, the claimant decided she would stay and work on increasing her numbers and working better

with one banker. Even though the claimant decided to stay about a week later her supervisor asked the claimant if she really wanted to stay.

The claimant learned the employer planned to transfer her to a top-performing banker who was asked to be part of the employer's "Phase-Out plan to terminate the claimant. (Claimant Exhibit A.) The claimant then concluded that no matter what she did, the employer would end up discharging her. The claimant then reluctantly gave her supervisor her 30-day notice. The claimant had until November 1 to find another job with the employer or she would receive a poor evaluation and a performance improvement plan. Even though the claimant applied for two other jobs with the employer, she did not get these jobs. The claimant's last day of work was October 31. As a result of resigning on October 31, the claimant did not receive a performance improvement plan or a poor evaluation. Even though the claimant was a FMLA employee, she did not abuse her FMLA.

The claimant established a claim for benefits during the week of November 2, 2014.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant voluntarily quit her employment. Instead, the employer planned to terminate the claimant by assigning her to a banker as part of the employer's "Phase Out plan to terminate the claimant. The employer constructively discharged the claimant or coerced the claimant to end her employment.

When an employer initiates the employment separation, the employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Casper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for implementing a plan to end the claimant's employment. The evidence does not establish that the claimant committed work-connected misconduct. As of November 2, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 20, 2014 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. The employer initiated the claimant's employment separation for reasons that do not constitute work-connected misconduct. As of November 2, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's' account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css