

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIRIDIANA CHAVEZ
Claimant

APPEAL NO: 13A-UI-07732-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 06/02/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 19, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Frankie Patterson represented the employer. Carol Anike, the store manager, and Kathy Lee, the district manager when the claimant worked, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not 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:

The claimant started working for the employer in January 2012. She worked as a full-time customer service representative. Anike supervised the claimant.

Prior to December 5, 2012, the claimant had used up her PTO time. The claimant needed time off because her husband had legal issues with immigration officials and she was pregnant. Prior to late November 2012, the claimant took off time to go to Omaha for her husband's legal issues. The claimant also requested a medical leave of absence for her pregnancy, but the employer did not receive the necessary medical documentation to grant this leave.

In late November 2012, the claimant asked her supervisor for time off to testify at her husband's immigration hearing in Omaha on December 5. The employer did not grant the claimant time off. The claimant talked to her husband's attorney about a subpoena, but the attorney did not want to issue the claimant a subpoena. The employer told the claimant she would have to make a choice – either report to work as scheduled or attend the court proceedings in Omaha. The claimant had only received an informal warning for attendance so the next absence would result in a written warning. After the written warning, the claimant's job could be jeopardy if she had more attendance issues.

The claimant did not want to be discharged so she submitted her resignation on December 2, 2012. Her resignation was effective immediately.

The claimant established a claim for benefits during the week of June 2, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Since the claimant's job was not in jeopardy for attendance issues prior to December 2, she initiated her employment separation by resigning on December 2, 2012. The evidence does not establish that the claimant was forced to resign. She had options and chose to resign so the employer would not discharge her at some time in the future for attendance issues.

When a claimant quits, she has the burden to establish that she left employment for reasons that qualify her to receive benefits. Iowa Code § 96.6(2). The claimant voluntarily quit her employment for compelling personal reasons or a serious family need, but her reasons for quitting do not qualify her to receive benefits. 871 IAC 24.25(23). As of June 2, 2013, the claimant is not qualified to receive benefits.

The issue of overpayment of benefits and whether the claimant will be required to pay back any overpayment of benefits she may have received since June 2, 2013, will be remanded to the Claims Section to determine,.

DECISION:

The representative's June 19, 2013 determination (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The employer did not force the claimant to resign. The claimant is disqualified from receiving unemployment insurance benefits as of December 2, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The issue of overpayment of benefits and whether the claimant will be required to pay back any overpayment of benefits she may have received since June 2, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css