

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOANNA M MOFFATT
Claimant

APPEAL NO. 09A-UI-01746-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 01/04/09 R: 02
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated January 30, 2009, reference 01. The decision allowed benefits to the claimant, Joanna Moffatt. After due notice was issued, a hearing was held by telephone conference call on February 25, 2009. The claimant participated on her own behalf. The employer participated by Supervisor Mike Dolmage.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Joanna Moffatt was employed by Wells Fargo from February 21, 2005 until January 5, 2009 as a full-time collector. She went on short-term disability on August 30, 2008 and was approved through November 14, 2008. When that time period ended, she requested an extension and was notified in early December 2008 it was denied for lack of medical documentation, and she would be on unapproved absence as of November 15, 2008.

Supervisor Mike Dolmage sent her a letter on December 24, 2008, notifying her she was expected to return to work January 1, 2009, since her leave of absence had not been extended. If she did not return to work by that date, she would be considered a voluntary quit. Ms. Moffatt received the letter but did nothing. She did not go into the office and talk with her supervisor, or go into the human resources department or leave management office to discuss her options. Her doctor had said she could return to work but not in the collections department. During her leave she did not apply for other positions, discuss her options with anyone, or provide medical documentation to the employer about the situation.

When the claimant did not return to work as of Monday, January 5, 2009, Mr. Dolmage contacted the employee relations department and it was decided to separate Ms. Moffatt. Her personal belongings from her desk were shipped to her at that time.

Joanna Moffatt has received unemployment benefits since filing a claim with an effective date of January 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

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 was aware the employer had not extended her leave of absence and expected her to return to work on January 1, 2009. Her doctor had released her to return to work in any other position besides collections and she was therefore capable of going into her workplace with a doctor's statement, to discuss her options with her supervisor and the human resources department. She elected to do none of these things but simply declined to come to work and allow the employer to separate her from employment.

Ms. Moffatt did not make any diligent, good-faith effort to maintain her employment by contacting her employer, discussing her options, providing medical documentation, or seeking a consultation with her supervisor or human resources representative in order to maintain her job. The administrative law judge considers this to be a voluntary quit without good cause attributable to the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the

department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of January 30, 2009, reference 01, is reversed. Joanna Moffatt is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw