

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MORGAN M GREEN
Claimant

APPEAL NO. 18A-UI-08445-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07/15/18
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.5-1-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Morgan Green (claimant) appealed a representative's August 2, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 29, 2018. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer's request for postponement should be granted and whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: On March 8, 2016, the claimant was assigned to work for the employer by a temporary agency. The claimant was hired by the employer in October 2016, as a full-time mortgage claims associate. In November 2017, the employer changed the claimant's job duties. He complained to the employer about a co-worker who glared at him and harrumphed. The claimant believed the co-worker was instrumental in getting other workers terminated.

On April 25, 2018, the claimant moved to Ames, Iowa, with his girlfriend in preparation for attending school in the fall of 2018. His girlfriend left and the claimant attempted suicide on May 19, 2018. The employer granted the claimant's request for temporary disability through July 8, 2018. The claimant's therapist returned him to work even though the claimant had continuing mental health issues.

On July 9, 2018, the claimant returned to his job but felt he could not continue working. He did not like the change in position, the demeaning co-worker, and the commute. The claimant was continuing to have feelings of self-harm. On July 9, 2018, the claimant wrote an email to the

employer resigning his employment. The email stated he was resigning to pursue a bachelor's degree at Iowa State University.

The hearing began at 8:03 a.m. on August 29, 2018. At 8:21 a.m. on August 29, 2018, the administrative law judge received a request for postponement from the employer's representative company, Barnett Associates. The request indicated that the employer could not secure a hearing representative for the hearing. The employer requested a postponement because "the employer would like to have a hearing representative with them since they are not comfortable participating alone".

REASONING AND CONCLUSIONS OF LAW:

The first issue is the employer's request for postponement.

Iowa Admin. Code r.871-26.8(2) provides:

(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

The postponement request was in writing but it was not three days in advance of the hearing. No reason was given in the request for the untimeliness of the application. The employer's request to postpone the hearing is denied. The employer did not register a telephone number for the hearing and, therefore, did not participate without a representative.

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.25(21) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(26) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(26) The claimant left to go to school.

Iowa Admin. Code r. 871-24.25(1) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer he was leaving and quit work. When an employee quits work because he is dissatisfied with the work environment, does not like the commute, or is going to a student, his leaving is without good cause attributable to the employer. The claimant left work because he did not like the work environment or the commute to work. He planned to be a full-time student. His leaving was without good cause attributable to the employer.

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.

A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant also left work for mental health reasons. He did not leave under the advice of his physician. The claimant's resignation letter did not inform the employer of this reason. The claimant has failed to provide the employer with certification that he has recovered. In addition the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's August 2, 2018, decision (reference 01) is affirmed. The employer's request for postponement is denied. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs