

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLIE J SUBDON

Claimant

APPEAL NO. 09A-UI-16512-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 09/06/09

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Kylie Subdon filed a timely appeal from the October 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 8, 2009. Ms. Subdon participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Ms. Subdon's voluntary quit was for good cause attributable to the employer.

Whether Ms. Subdon had met the work ability and availability requirements of the law since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kylie Subdon was employed by Wells Fargo Bank as a full-time debt collector. Ms. Subdon's duties involved contacting customers regarding past due mortgage payments. Ms. Subdon assisted with other projects as assigned. Ms. Subdon started the employment on February 23, 2009 and last performed work for the employer on July 4, 2009. Ms. Subdon initially performed well in the employment, but her performance later declined somewhat when she began to internalize the frequent yelling she had to endure from customers.

On July 15, Ms. Subdon contacted the employer's human resources department to discuss her desire for time off for personal issues she needed to work through. Ms. Subdon had exhausted her available paid time off. A human resources representative told Ms. Subdon she would needed to take a leave of absences to obtain the time off and would have to go through her supervisor, Tom Killeen, to request the leave of absence. Ms. Subdon contacted Mr. Killeen by e-mail to request a three-month leave of absence for personal and mental health reasons. Mr. Killeen denied the request for a leave of absence. Ms. Subdon elected not to return to work and entered in an agreement with the employer whereby her separation would be deemed a voluntary quit so that she would be eligible for rehire at some later date.

At the time Ms. Subdon separated from the employment, she had been diagnosed with depression and had been seeing a therapist. The employer's human resources department had facilitated Ms. Subdon's initial contact with the therapist. Ms. Subdon found it difficult to get out of bed and had thoughts of harming herself. The therapist believed Ms. Subdon should start taking antidepressant medication, but Ms. Subdon was not open to the idea at the time. Ms. Subdon did not specifically discuss with her therapist whether she should continue in the employment and the therapist did not advise Ms. Subdon to leave the employment. Ms. Subdon last saw the therapist in early July.

At the suggestion of the therapist, Ms. Subdon started college classes at DMACC in Boone on August 26, 2009. Ms. Subdon relocated to Boone after she lost her residence in Winterset.

Ms. Subdon established a claim for unemployment insurance benefits that was effective September 6, 2009. Ms. Subdon did not start her job search until October and then only applied for two positions. In mid-October, Ms. Subdon applied for position at the Wal-Mart in Boone. In late October, Ms. Subdon applied for a position at Family Video in Boone.

Ms. Subdon received no treatment for her depression from the time of her last appointment with the therapist in early July until she started taking antidepressant medication at the end of November 2009. The administrative law judge noted during the hearing that Ms. Subdon was exhibiting classic signs of significant depression recognizable even to a layperson.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address Ms. Subdon's separation from the employment.

Iowa Code section 96.5-1-d 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. 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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job. In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

The weight of the evidence indicates that Ms. Subdon voluntarily quit the employment due to non-work-related depression. The quit was not based on the advice of a medical or mental health professional. Based on the evidence and the law, the administrative law judge must conclude that Ms. Subdon voluntarily quit for compelling personal reasons, but not for good cause attributable to the employer. Ms. Subdon is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Subdon.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a, (22) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Ms. Subdon has not met the work ability and availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits. Ms. Subdon has not engaged in an active and earnest search for new employment. At the time of the hearing, Ms. Subdon had just started antidepressant medication after going months without any treatment at all for what is clearly a significant struggle with depression. Ms. Subdon would not be eligible for benefits until she was able to demonstrate the ability to perform work, availability for work, and an active and earnest search for new employment. Ms. Subdon would still have to meet all other eligibility requirements.

The administrative law judge has strong empathy for Ms. Subdon and her current struggle with depression. Unfortunately, the law is not structured in a way that would authorize the administrative law judge to allow benefits under the facts of this case.

DECISION:

The Agency representative's October 23, 2009, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

Since she established her claim, the claimant has not demonstrated ability to work, availability for work, or an active and earnest search for new employment. On this separate basis, the claimant would also be ineligible for unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs