

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M ORONA
Claimant

APPEAL NO. 12A-UI-00586-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 12/11/11
Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 9, 2012, reference 01, that concluded the claimant had resigned after being forced to do so or be discharged. A telephone hearing was held on February 14, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kii Elliott participated in the hearing on behalf of the employer with a witness, Dan Maiers.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a home preservation specialist from August 9, 2010, to November 17, 2011.

On November 8, 2011, the claimant's supervisor informed her that she was being put on a performance improvement plan due to deficiencies in her job performance. The supervisor informed her that her performance would be reviewed again in 30 days. She was not informed that her employment was going to be terminated.

The claimant was upset that she was put on a performance improvement plan because she thought she was doing a good job. She decided that if the employer was dissatisfied with her work performance everyone would be better off if she quit. She informed her supervisor that she was resigning on November 17, 2011. Continuing work was available to the claimant when she quit.

The claimant filed for and received a total of \$2,400.00 in unemployment insurance benefits for the weeks between December 11, 2011, and January 21, 2012.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant voluntarily quit her job; she was not discharged or told that if she did not resign, she would be discharged.

871 IAC 24.25(33) provides that a claimant is considered to have voluntarily quit employment without good cause attributable to the employer if she left because she felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested her to leave and continued work was available. The facts here are identical to the rule and the claimant therefore quit without good cause.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 9, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs