

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLA SEARS**

Claimant

**APPEAL NO. 10A-UI-07098-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK**

Employer

**OC: 04/04/10**

**Claimant: Appellant (4)**

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

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Carla Sears (claimant) appealed a representative's May 3, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2010. The claimant participated personally. The employer was represented by Steven Zaks, Hearings Representative, and participated by Margaret Brandt, Supervisor in Customer Service. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant is denied unemployment insurance benefits because she voluntarily quit work without good cause attributable to the employer. In addition whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 29, 2003, as a full-time customer service representative III. The claimant suffered from a non-work-related condition. She requested and was granted a short-term disability from October 9, 2009, through March 16, 2010. The claimant did not return to work even though her physician released her to return to work without restrictions. On April 8, 2010, the claimant submitted her letter of resignation. She wanted to return to work in a different position but the employer only had work for her in her regular capacity. Continued work was available had the claimant not resigned.

**REASONING AND CONCLUSIONS OF LAW:**

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-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.

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). 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).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has recovered and returned to the employer asking for different work. The claimant's regular work was available but the claimant refused. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was released to return to work without restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

## **DECISION:**

The representative's May 3, 2010 decision (reference 01) is modified in favor of the appellant. 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. The claimant is not disqualified from receiving unemployment insurance benefits as she is able and available for work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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