

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT M YOUNG
Claimant

APPEAL NO. 10A-UI-05820-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 03/14/10
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 7, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 7, 2010. Claimant participated. Employer participated by Lynne Anderson, Reverse Mortgage Branch Manager. The employer was represented by John O'Fallon. The record consists of the testimony of Robert Young and the testimony of Lynne Anderson.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant was overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a reverse mortgage consultant in a bank store located in Adel, Iowa. He began this position on November 9, 2009. The claimant resigned his position on March 4, 2010. He thought he was going to get another job with Wells Fargo starting that following Monday. Work was available for the claimant at the time he resigned his position.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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). 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. See 871 IAC 24.25.

The evidence established that the claimant resigned his position voluntarily as a reverse mortgage consultant on March 4, 2010. He told his branch manager, Lynne Anderson, that he was quitting. The claimant was not terminated and the employer had no plans to terminate the claimant. The claimant resigned because he thought he was going to start another job on the following Monday. Work was available at the time the claimant resigned. It was the claimant who initiated the separation of employment, not the employer. There is no evidence that the claimant voluntarily left for good cause attributable to the employer. Benefits are denied.

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 issue of whether the claimant has been overpaid benefits is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated April 7, 2010, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css