

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS FARRELL
Claimant

APPEAL NO: 13A-UI-11338-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 09/08/13
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Douglas Farrell (claimant) appealed an unemployment insurance decision dated September 27, 2013, reference 02, which held that he(claimant) was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Wells Fargo Bank (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 7, 2013. The claimant participated in the hearing. The employer elected not to participate.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

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 employed as a full-time phone banker from October 2010 through September 9, 2013 when he formally resigned. He had been previously warned for attendance and worked Sundays, Mondays, and Wednesdays through Fridays. The claimant's last day of work was August 30, 2013 and he was incarcerated for a probation violation on September 1, 2013. He was not released from jail until September 6, 2013 but did not return to work on September 8, 2013 because he had already reported his absence for that day since he did not think he would be out of jail. The claimant was going to be terminated for attendance but opted to resign instead so he could be eligible for rehire. He submitted a written resignation on September 9, 2013 stating he quit for personal reasons.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by submitting a written resignation on September 9, 2013 stating he quit for personal reasons.

The law presumes it is a quit without good cause attributable to the employer when an employee is deemed to have left because they are incarcerated. 871 IAC 24.25(16). It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

The outcome of this case would have been the same if the administrative law judge had concluded that the employer discharged the claimant. His absences due to incarceration were excessive unexcused absences and constituted misconduct. See Iowa Code § 96.5(2)(a) and 871 IAC 24.32(7).

DECISION:

The unemployment insurance decision dated September 27, 2013, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css