

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN M WEISS
Claimant

APPEAL NO. 09A-UI-17281-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 01/18/09
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 2, 2009, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 22, 2009. Claimant participated. Employer participated by Kathy Lee, community bank president—Waterloo/Cedar Falls. The record consists of the testimony of Robin Weiss and the testimony of Kathy Lee.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant had been 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 was hired as a personal banker trainee on June 15, 2009. At the time she was recruited, she was informed that she would have to be available one hour a week to stay late and meet with customers who might not be able to make it to the bank during regular customer hours. As a personal banker, the claimant was expected to build a “book of business”, that is, to develop a group of clients and match their financial needs to the services offered by the employer. The employer did have quotas. A personal banker was supposed to make ten contacts a day and have eight sales a day.

The claimant did not like the sales part of her job. She became nauseous and had crying spells due to the stress of her job. She gave her employer two weeks’ notice. She was encouraged to keep working by her employer; it took time to build a client base. The claimant’s last day of work was October 9, 2009. Work was available for her at the time she voluntarily quit her job. No physician or other health care practitioner recommended that she quit her job.

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 in this case established that it was the claimant who initiated the separation of employment. She intended to sever the employment relationship and did so by giving two weeks' notice and then quitting her job. Work was available for her at the time she left.

The reason the claimant left her job is that she did not like the sales part of her job. Her employer had sales quotas and contact requirements and the claimant felt that she was being asked to do telemarketing. She took out of context a remark that had been made at the time of her recruitment that she would be required to stay late one hour a week to service customers who could not get to the bank during the day. She thought this meant she would have to do sales work only one hour per week whereas she found she was doing it one hour per day. She felt the sales requirements were stressful and she did not want to do sales. She decided to quit her job since she was suffering from physical symptoms of stress.

Although the claimant had good personal reasons for leaving her job, the evidence does not show that the type of work that the claimant was hired to do was misrepresented to her at the time of assignment. The employer had a reasonable expectation that the claimant would work to establish a client base and in order to do that, she did need to do sales work. The claimant may not have realized the extent of the sales work but she should have understood that she needed to get customers to buy the employer's services. The claimant voluntarily left her job without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits. 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 overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated November 2, 2009, reference 02, 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/pjs