

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELISE J THOMAS

Claimant

APPEAL NO. 13A-UI-14122-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 11/24/13

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 13, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone hearing was held on January 16, 2014. The claimant participated personally. The employer participated by Kevin Shetler, branch manager. John O'Fallon was the hearing representative. The record consists of the testimony of Elise Thomas and the testimony of John O'Fallon.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

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 employed as a mortgage consultant at the employer's Ingersoll branch. The claimant was originally hired on November 1, 2004, as a retention specialist. She was a full-time employee. The claimant transferred to the job of mortgage consultant on December 1, 2012. She was paid \$12.00 an hour for 40 hours a week as a draw against commission. After ninety days, all earnings were strictly based on commission. The claimant quit her job on November 16, 2013, because she was not closing enough loans and was losing money. The employer was not concerned about her job performance. She was in good standing as an employee. Work was available had the claimant elected to keep working.

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.

871 IAC 24.25(13) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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 claimant is not eligible for unemployment insurance benefits. The evidence established that the claimant quit her job voluntarily because she was dissatisfied with the amount of money that she was making. The claimant knew when she took the job of mortgage consultant that after ninety days her wages would depend on commissions. The claimant was not closing enough loans and felt that she was losing money. She made the decision to quit her job. Since the claimant knew the wages she would earn at the time she took the job, her dissatisfaction with her wages is not good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated December 13, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs