

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PAITEN BAUER**  
Claimant

**APPEAL 15A-UI-07745-KC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 06/14/15  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 29, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 3, 2015. The claimant participated. The employer participated through Steve Zaks, Hearing Representative, and Christopher Shaver, Operational Risk Analyst III. (Exhibit A)

**ISSUE:**

Did the claimant voluntarily quit with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an operations clerk III from February 24, 2014, and was separated from employment on May 8, 2015, when she resigned. She last worked on April 30, 2015.

The claimant began receiving e-mails from a supervisor in another area, not in a member of her supervisory chain of command, requesting to hang out with her. She ignored them. Then he started going to her work area. In January 2015, the claimant experienced a coerced sexual encounter in the locker room with the same supervisor. The supervisor told her that unless she had sex with him he would get her fired. He also told her that if she told anyone, she would be fired because it is against company policy. She believed him. It occurred once. He did not approach her again. She told one or two co-workers but did not tell anyone in a supervisory or management capacity. She did not report it to the police. Under sworn testimony she did not identify the name of the supervisor with whom she had sex or the date on which it occurred.

The claimant began having panic attacks in 2015. She attributed the panic attacks partially to experiences with her prior supervisor, who she perceived as very demanding and stress-producing. She also attributed the panic attacks to feeling uneasy when she was around the supervisor with whom she had sex. She underwent holter monitor testing in February 2015

due to chest pain. (Exhibit A) She understood the physician to indicate her discomfort may have been due to panic attacks for which she sought treatment. She told Shaver, her supervisor, about the panic attacks but did not provide to him, or someone in human resources, medical documentation. Shaver permitted her to avoid certain meetings due to feeling panicky. He sent her e-mail messages about the meetings, updating her on the area's operations. She did not further specify the cause of the panic attacks. She did not request coverage under the Family Medical Leave Act (FMLA). The claimant submitted no medical records at the hearing that documented a mental diagnosis.

The claimant last worked on April 30, 2015. Thereafter, until May 8, 2015, she did not attend work or call her supervisor or human resources to report that she would not be at work. On May 8, 2015, the claimant left a voicemail for Shaver stating that she was resigning. She gave no reason for her resignation. She provided no reason or medical documentation for her absences for the period of April 30 through May 8, 2015. She was tempted to talk to a female senior manager about the situation, but she had already decided she did not want to return to work and really just did not care.

The claimant's credibility is at issue in this case. Her presentation at hearing was somewhat flippant regarding the sexual encounter, her panic attacks, and whether she wanted to work for the employer. She did not name the man with whom she had sex and she did not identify the date of the encounter. She was vague about what triggered her panic attacks. When she decided to quit, she really just did not care.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(22) & (37) 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:

(22) The claimant left because of a personality conflict with the supervisor.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an

educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work were within the purview of the individual's training and experience.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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). The claimant left work without approval for one week and then resigned without explanation.

The claimant alleged sexual harassment caused her to quit her position. She asserted that she resigned due to a coerced sexual encounter with a supervisor from another department in January 2015. There is no corroboration of the event. The claimant told no one in management about the incident. There was no further contact with the supervisor in question. She did not identify the supervisor. She did not document that she had a mental condition, attributable to the employer, which required treatment. The claimant resigned four to five months after the event on which she based her allegations of sexual harassment. She did nothing to alleviate the situation by telling the employer.

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986). The claimant provided insufficient evidence to meet either standard.

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 24.26(2) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following is one of the reasons for a claimant leaving employment with good cause attributable to the employer:

(2) The claimant left due to unsafe working conditions.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following is one reason for a claimant leaving employment with good cause attributable to the employer: intolerable or detrimental working conditions.

The claimant has not met her burden of proof to show that her working conditions were unsafe for her mental health and intolerable as to the risk of continuing harm. She did not establish that

she has a diagnosed anxiety disorder. She has not provided sufficient evidence to establish sexual harassment.

The claimant did not comply with the notice requirements of *Suluki v. EAB*, 503 N.W.2d 402 (Iowa 1993) and *Cobb v. EAB*, 506 N.W.2d 445 (Iowa App. 1993). Before she quit, she told no one in management about the situation. She did not request to be placed away from the supervisor with whom she had the sexual encounter. She did not tell her supervisor why she had panic attacks or document the diagnosis. She did not indicate the panic attacks were work-related. He accommodated her panic attacks as she requested. She gave the employer no notice of the situation; therefore the employer had no opportunity to address the situation, the results of which may have alleviated her panic attacks.

In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The claimant's testimony was not fully credible; she was vague about some of the most critical matters like the sexual encounter and her panic attacks. In addition, her demeanor suggested that she was not serious about the claim or the events she recounted.

While the claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. The claimant failed to meet her burden of proof. Benefits must be denied.

#### **DECISION:**

The June 29, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

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