

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PEGGY A HARGIS

Claimant

APPEAL 17A-UI-04592-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 04/09/17

Claimant: Appellant (1)

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 April 24, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 16, 2017. Claimant participated. Employer participated through hearing representative Karen Stonebraker and customer service manager Monica Birmingham.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a supervisor in customer service from October 3, 2005, and was separated from employment on February 3, 2017, when she quit.

The last day claimant performed work for the employer was on October 21, 2016. After October 21, 2016, claimant was absent from work because she needed to provide constant care for her mother. From October 24, 2016 through October 28, 2016 claimant was on an approved Family and Medical Leave Act (FMLA) leave. Claimant was also approved to use a separate FMLA leave from October 24, 2016 through October 24, 2017, for five days per month. As of January 26, 2017, claimant had 400 hours of this separate FMLA leave remaining. From October 24, 2016 to January 16, 2017, claimant also had a pending claim for FMLA leave.

On January 27, 2017, Ms. Birmingham spoke with claimant about her employment options. Ms. Birmingham explained to claimant that she was no longer on an approved leave of absence. Claimant asked if the employer would approve a personal leave, but the employer declined her request. Claimant did not have an end date for her leave request. Ms. Birmingham told claimant she had to either return to work, see about getting prior absences excused, or she

could resign. Claimant told Ms. Birmingham she was not going to try to get her prior absences excused. Claimant also told Ms. Birmingham she could not return to work because her mother still needed constant care. Ms. Birmingham explained that if claimant did not return to work it may have to look into discharge. Ms. Birmingham did not talk specifics with claimant about a discharge date or the process. Ms. Birmingham did not tell claimant she would be discharged if she did not quit.

On February 1, 2017, Ms. Birmingham spoke with claimant on the phone. Claimant told the employer that she was going to resign and they set up a time to meet on February 3, 2017. Claimant elected to resign because she did not want to close any options about a possibility of returning to the employer. On February 3, 2017, claimant gave Ms. Birmingham her written resignation. Ms. Birmingham did not tell claimant she had to resign or she would be discharged. The employer had work available for claimant if she did not resign. Since claimant resigned, she has not returned to the employer to offer her services. Claimant filed a claimant for benefits effective April 9, 2017 and the need for her to provide care was no longer needed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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 Code § 96.5(1)c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.26(8) provides:

This separation is not considered to be a voluntary quit.

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or marriage.

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998).

In October 2016, claimant requested FMLA leave to take care of her mother. On January 27, 2017, Ms. Birmingham informed claimant she was no longer on an approved leave of absence and they discussed claimant's options. Ms. Birmingham did not tell claimant she had to resign or she would be fired. On February 3, 2017, claimant elected to resign so she could continue to provide constant care for her mother and leave open a potential option of returning to the employer in the future. Claimant's decision to leave employment to provide care for her mother may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Furthermore, claimant did not report to the employer to offer her services to the employer after the need for her to provide care was no longer needed. Benefits are denied.

DECISION:

The April 24, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/scn