

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA S WATERS**  
Claimant

**APPEAL NO. 13A-UI-00726-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**OC: 02/19/12**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Midwest Professional Staffing LLC filed a timely appeal from a representative's decision dated January 11, 2013, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 20, 2013. The claimant participated. The employer participated by Mr. Jason Harpenau, Staffing Manager and Mr. Bill Raine, Operations Manager. Claimant's Exhibits A, B, C and D were received into evidence.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: Pamela Waters began employment with Midwest Professional Staffing LLC on July 10, 2012 and continued employment until December 6, 2012 when she voluntarily quit her assignment at Wells Fargo. Ms. Waters had been assigned to Wells Fargo in the loan processing department. Work continued to be available to Ms. Waters at the assignment when she left.

Prior to accepting the assignment at Wells Fargo through Midwest Professional Staffing LLC. Ms. Waters had made inquiries with Midwest about whether taking the Wells Fargo assignment would preclude the claimant from applying for or being offered permanent positions following the Wells Fargo assignment. The claimant was concerned because in her past experience she had found that most temporary employment services were unwilling to remove temporary workers from Wells Fargo assignments because of what the claimant believed to be contractual arrangements preventing the temporary companies from doing so. Ms. Waters desired to find a permanent full-time job and did not want to unduly limit her opportunities for finding a permanent full-time job.

The claimant was informed that taking the Wells Fargo assignment through Midwest would not preclude Ms. Waters from being a candidate for full-time positions that might become available through Midwest Professional Staffing. The claimant was further informed, however, that

Midwest Professional Staffing could not control the policies of other temporary employment services for any contractual arrangements that those other services may or may not have with Wells Fargo.

In a number of subsequent conversations Ms. Waters again raised the subject with Midwest Professional Staffing after accepting the assignment with Wells Fargo through Midwest Professional Staffing. Midwest reinforced their position that the claimant could apply for any permanent work that came through Midwest Professional Staffing as long as the claimant was willing to provide a two-week advance notice to Wells Fargo before ending that assignment. During the time that Ms. Waters was on the Wells Fargo assignment for Midwest no full-time permanent positions of the type that Ms. Waters had been looking for became available through Midwest Professional Staffing. The claimant it appears, however, became more suspicious that her Wells Fargo assignment through Midwest might preclude her ability to take permanent full-time work if offered, based upon the opinions expressed to the claimant by other temporary employment services during this time.

Although the claimant was working for Midwest and on a long-term assignment with Wells Fargo for Midwest, it appears that Ms. Waters attempted to sign up with other temporary employment services but could not be accepted as their clients because she was employed at the time at Midwest. One or more of the other temporary services had also voiced their opinion that it was their belief that all temporary employment services had a contract with Wells Fargo and precluded temporary employment services from removing the temporary employee on assignment with Wells Fargo for the purpose of being placed at a different assignment with a different employer.

Although Ms. Waters had been informed of Midwest Professional Staffing's position she would be available for full-time work offered through Midwest Professional Staffing as long as she provided a two-week notice to Wells Fargo, Ms. Waters stayed at the Wells Fargo assignment until a preferred manager at the Wells Fargo location was going to leave his job with Wells Fargo. The claimant then tendered her notice of resignation to coincide with the same date that the Wells Fargo manager was leaving his employment with Wells Fargo. Work continued to be available to the claimant at the time that she chose to leave.

#### **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 24.26(1) provides:

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

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of

employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of an intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

In this matter the claimant initially made inquiries with Midwest Professional Staffing about whether accepting a particular long-term temporary assignment would preclude her from being eligible to apply for other full-time permanent positions that might become available through Midwest Professional Staffing. The claimant was told that it would not but the employer informed the claimant that they could not have control over what other temporary employment firms' policies were. The claimant accepted the Wells Fargo assignment through Midwest Professional Staffing and stayed for approximately five months before tendering her resignation to coincide with the leaving of a preferred manager at the Wells Fargo location that the claimant liked to work with. Prior to leaving the temporary assignment, Ms. Waters had a number of conversations with other staffing firms and with a representative of Midwest Professional Staffing. Other staffing firms offered the claimant their opinions as to what Midwest Staffing rules were but did not speak for Midwest Staffing. Midwest Staffing repeatedly confirmed to the claimant that the Wells Fargo assignment would not preclude her from being a candidate for future full-time permanent assignments that came through Midwest Staffing as long as the claimant provided a two-week notice before she left Wells Fargo. This rule did not change throughout the time that Ms. Waters was employed by Midwest Staffing at the Wells Fargo assignment.

For reasons stated herein the administrative law judge concludes that there was no change in the original agreement of hire between the claimant and Midwest Professional Staffing and the claimant's leaving employment on December 6, 2012 was not attributable to Midwest Professional Staffing. The claimant chose to end her assignment that day because of a preferred manager at Wells Fargo would no longer be there and the claimant did not want to take the chance of working for a manager that she did not feel was compatible with her. While these are certainly good cause reasons from Ms. Waters' personal viewpoint they were not good cause reasons attributable to Midwest Professional Staffing. Unemployment insurance benefits are therefore withheld.

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.

**DECISION:**

The representative's decision dated January 11, 2013, reference 02, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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