

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TAMMIE D FISHER
2516 WOODLAND AVE
DES MOINES IA 50312

WELLS FARGO BANK
C/O TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

AMENDED

Appeal Number: 06A-UI-00664-CT
OC: 05/15/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wells Fargo Bank filed an appeal from a representative's decision dated January 9, 2006, reference 05, which held that no disqualification would be imposed regarding Tammie Fisher's separation from employment. After due notice was issued, a hearing was held by telephone on February 17, 2006. Ms. Fisher participated personally. The employer participated by Lisa Epperly, Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Fisher began working for Wells Fargo Bank on July 5, 2005 as a full-time customer service representative. On November 2, the employer met with her concerning an alleged security breach. It had been reported that she clocked a coworker in. The supervisor, Lisa Epperly, advised her that such actions could be grounds for termination. Ms. Fisher denied the allegation and was escorted back to her desk by Ms. Epperly. Based on her denial of the allegation, no disciplinary action was taken or planned. The coworker she was alleged to have clocked in was then escorted to the conference room, a room at least 100 feet from Ms. Fisher's workstation. Ms. Fisher then took her personal possessions and left.

Ms. Fisher called on November 3, 4, and 7 to report that she would be absent for personal reasons. Her calls were to the attendance hot line. The hot line attendant sends e-mails to the various supervisors advising as to which employees had called in absent and the reasons given. Ms. Fisher did not call or report for work on November 8, 9, or 10. On November 10, the supervisor called her home and left a message to make sure there had been no problems preventing her from being at work. Ms. Fisher responded to the call and left a message that she did not know she had a job. At that point, her job was no longer available. The employer has a known work rule, which states that three consecutive unreported absences will be considered job abandonment. Continued work would have been available for Ms. Fisher if she had continued reporting to work or calling the employer regarding her intentions.

Ms. Fisher has been paid a total of \$2,112.00 in job insurance benefits since filing her additional claim effective December 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Fisher was separated from employment for any disqualifying reason. The administrative law judge concludes that she abandoned her job when she stopped reporting for available work. She was not discharged on November 2 when she met with Ms. Epperly concerning the security breach. She acknowledged during the hearing that she was not told directly on November 2 that she had been fired. She contended that she learned of her discharge while listening outside the door of the conference room while the employer was speaking with the individual she was alleged to have clocked in. However, Ms. Fisher called in absent the next three workdays. It seems unlikely that a discharged individual will continue to report intended absences. Ms. Fisher denied having called in on any of the three days. There would seemingly be no reason for the employer to fabricate the calls to the attendance hot line. If Ms. Fisher had not, in fact, called on November 3, 4, and 7, the employer would be able to establish a case of three day "no call/no show" to the same extent as it did for the November 8, 9, and 10 dates. For the above reasons, the administrative law judge concludes that the separation was initiated by Ms. Fisher and is, therefore, a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). An individual who is absent for three days without notice in violation of a known company rule is presumed to have voluntarily quit for no good cause attributable to the employer. See 871 IAC 24.25(4). Ms. Fisher has not presented any evidence to overcome the

presumption. It is concluded, therefore, that her separation was not for good cause attributable to Wells Fargo Bank. Accordingly, benefits are denied.

Ms. Fisher has received benefits since filing her additional claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 9, 2006, reference 05, is hereby reversed. Ms. Fisher voluntarily quit her employment with Wells Fargo Bank for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Fisher has been overpaid \$2,112.00 in job insurance benefits.

cfc/pjs