

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHAN A BRITTENHAM**  
Claimant

**APPEAL NO. 07A-UI-00761-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK**  
Employer

**OC: 12/17/06 R: 02  
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Wells Fargo Bank filed a timely appeal from an unemployment insurance decision dated January 10, 2007, reference 01, that allowed benefits to Nathan A. Brittenham. After due notice was issued, a hearing was held in Des Moines, Iowa, on March 27, 2007, with Mr. Brittenham participating. Operations Analyst Julie Freimuth participated for the employer. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Did the claimant leave work with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nathan A. Brittenham was employed as a fraud prevention specialist by Wells Fargo Bank from March 28, 2005, until he resigned February 24, 2006. A veteran of the Iraq War, Mr. Brittenham returned to civilian life with a ganglion cyst on his wrist. The cyst interfered with his job duties, which often included typing notes while speaking on the telephone. He underwent surgery in October 2005. As a result of the surgery and complications, he missed a substantial amount of work. Pursuant to the employer's no-fault attendance policy, Mr. Brittenham received a warning that he faced discharge if his attendance did not improve. He contracted pneumonia in early 2006. This caused him to receive a warning on February 9 that he could be discharged if he had any further absences before April 27, 2006. Nevertheless, Mr. Brittenham was absent because of illness on February 17 and 18. Knowing he faced the possibility of discharge, he spoke with his supervisor on February 24. His supervisor wanted to give Mr. Brittenham one last chance and so worked out an arrangement with human resources to extend his probation into May of 2006 rather than to discharge him immediately. Mr. Brittenham served as an MP while on active duty. His eventual career goal is to work in law enforcement. Reasoning that it would appear better on his resume to have resigned rather than to have been discharged by this employer, he chose to resign on February 24. At the time, he still felt the effects of the pneumonia and was concerned that he would have yet more absences, triggering a discharge.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether, given the facts of this case, Mr. Brittenham should be disqualified for unemployment insurance benefits. The administrative law judge concludes that disqualification is inappropriate.

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.

The evidence establishes that Mr. Brittenham would almost certainly have been discharged because of absenteeism due to illness if he had not resigned. Discharge under those circumstances would not have been a disqualifying event. See 871 IAC 24.32(7). Resignation when the only other option is immediate discharge is not a disqualifying event. See 871 IAC 24.26(21). While immediate discharge was not the only other option, the evidence persuades the administrative law judge that it was the inevitable option. Resignation in the face of certain discharge for a non-disqualifying reason should not subject a claimant to disqualification. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated January 10, 2007, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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