

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC HEINEMANN

Claimant

APPEAL NO: 16A-UI-07582-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 06/05/16

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 28, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 28, 2016, and continued on August 4, 2016. The claimant participated in the hearing. Marcus Marple, Branch Sales Manager; Dan Staub, Area Sales Manager; Judy Escobar, Claimant Services Representative; and Steven Zaks, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time home mortgage consultant for Wells Fargo Bank from November 30, 2015 to June 1, 2016. He voluntarily left his employment June 1, 2016, because he believed the employer misled him during the recruiting process about the pay and commission he could expect to make.

In July 2015 the claimant and Marcus Marple, Branch Sales Manager, began talks about the claimant coming to work for the employer. During an August 2015 meeting Mr. Marple brought an Excel spreadsheet that contained a list of all the employees in the region, names whited out, and their salary/pay through July 31, 2015, in the right hand column. Mr. Marple told the claimant that if he looked at the far right column, he would see 12 of the 25 sales representatives were on pace to make more than \$100,000.00 for the year. The claimant was intrigued by the opportunity and the chance to increase his income by 20 to 25 percent.

The parties met again in October with Area Sales Manager Dan Staub present. The claimant was impressed with the company and Mr. Marple and Mr. Staub and believed a position with the

employer would be a great opportunity for him. The claimant gave the employer a verbal commitment and the employer gave him a written offer. The claimant accepted the position sometime in October 2015 to start November 30, 2015. The offer included a guaranteed wage schedule for the first four months of employment. The employer guaranteed the claimant an hourly wage of \$39.90 during his first two months of employment and \$28.15 his next two months of employment (Employer's Exhibit Two, Page 32).

The claimant had experience in the mortgage consultant field as he had previously worked in the area for several years. His office bordered Mr. Marple's office and the employer instructed the claimant to take the virtual training class. Mr. Marple would meet with the claimant and role play different situations that might come up with customers or other contacts. The claimant spent one week in Chicago at software training.

In February 2016 the claimant began talking to other home mortgage consultants who worked for the employer and learned only a few consultants were on pace to make over \$100,000.00 that year. In March 2016 the claimant asked Mr. Marple about the pay and the spreadsheet he showed him when recruiting him. The claimant felt Mr. Marple "brushed off" his question and was also upset with the claimant for asking. In April 2016, the claimant was ready to resign his position due to the fact he did not feel he was making enough money and felt deceived in the recruiting process. Unfortunately, the claimant's wife was diagnosed with cancer and they needed the insurance provided by the employer so he decided to stay for the time being. Around May 24, 2016, Mr. Marple was meeting with the claimant about an error he made and the claimant became agitated and got up and shut the office door. He said his wife talked to a former employee who said it was possible Mr. Marple and Mr. Staub received a hiring bonus when hiring the claimant and Mr. Marple told him that was not true. Neither he nor Mr. Staub received a hiring bonus when the claimant accepted employment with the company and Mr. Marple further explained he was paid based on the loans the home mortgage consultants created. Mr. Marple suggested the claimant speak to another manager he knew personally to confirm there was no hiring bonus for managers. On May 31, 2016, the claimant further questioned Mr. Marple about the pay situation. He told Mr. Marple he did not know if the job was going to work out and Mr. Marple stated it may not. The claimant stated he had been making about \$80,000.00 at his previous job and Mr. Marple reminded him it takes time and hard work to get to the higher salary. Mr. Marple also reminded the claimant he never told him the money was guaranteed or a certainty.

On June 1, 2016, the claimant voluntarily quit his job with the employer. He stated he left because he felt deceived during the recruiting process; the one-on-one training with Mr. Marple was inadequate; and Mr. Marple was agitated by the claimant asking questions about the spreadsheet Mr. Marple showed him during the recruiting process.

The claimant has claimed and received unemployment insurance benefits in the amount of \$3,704.00 for the eight weeks ending July 30, 2016.

The employer did not personally participate in the fact-finding interview but did submit a written form and a brief letter from its representative stating the claimant voluntarily left his employment to accept other employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant voluntarily left his employment with Wells Fargo Bank because he felt the employer deceived him during the recruitment process with regard to the pay/commission he could expect to earn. The claimant's position was commission based, however, and the employer maintains it did not guarantee the claimant a certain wage because there is no way to predict an individual's pay when it is predicated on commission. There are several factors that go into what a home mortgage consultant will make in commission, including how hard the individual is willing to work and the time he is willing to commit to the job. The employer did not have a method to determine how dedicated the claimant would be to the position or any of the other intangibles that inform how much money the claimant could expect to make. The employer did show the claimant a spreadsheet in July 2015 demonstrating what each of the 25 employees in that area were projected to make with their commissions. Only 12 of the 25 employees, less than half listed, were on pace to make \$100,000.00. While the claimant assumed he would be among the group earning at least \$100,000.00, the employer did not guarantee him that amount of money per year when showing him what the 25 other home mortgage consultants in his area were projected to earn.

The claimant also cited a lack of one-on-one training with Mr. Marple as a reason for his leaving. Mr. Marple challenged the claimant's assertion that he did not sufficiently train the claimant. The employer's featured form of training is virtual reality training and Mr. Marple scheduled the claimant for that training. Additionally, the claimant and Mr. Marple shared an office wall and Mr. Marple was available to the claimant for additional questions. Mr. Marple may have had the claimant sign off on a few trainings they had not yet done on the checklist as a housekeeping matter but the claimant has not shown he was not sufficiently trained. The claimant was an experienced home mortgage consultant when hired by the employer which may have led the employer to believe he did not require as much one-on-one training as an employee with less experience would need. Finally, he has not demonstrated that Mr. Marple ever refused to help him when he had questions.

The final reason given by the claimant for his leaving was that his questions about the spreadsheet, commission, and pay agitated Mr. Marple. However, the claimant did not give any examples of Mr. Marple acting inappropriately or unprofessionally when the claimant questioned the pay structure.

Under these circumstances the administrative law judge concludes the claimant has not demonstrated that his leaving was for good cause attributable to the employer as that term is defined by Iowa Law. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

In this case the employer supplied a written form and brief letter from its third party representative's claimant services representative, Judy Escobar. Both the form and the letter indicated the claimant voluntarily quit his job to accept other employment which was simply incorrect. Additionally, the employer failed to meet the definition of participation in the fact-finding interview held June 27, 2016, at 10:15 a.m. It did not provide the name and telephone number of an employee with firsthand information to contact, if necessary, for rebuttal (Emphasis added). Nor did the written documentation or letter from the representative give details of the events surrounding the claimant's separation, which at a minimum must identify the dates and particular circumstances of the incident or incidents, including, in the case of a voluntary leaving the stated reason for the quit. Both the form and letter submitted by the employer's representative stated the claimant voluntarily left his employment to accept other employment when his stated reason for leaving was he felt deceived by the employer during the recruiting process and was unhappy with his pay, neither of which was addressed in any of the documentation supplied by the employer prior to the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

The claimant has received benefits but has been denied benefits as a result of this decision. The claimant, therefore, is overpaid benefits in the amount of \$3,704.00 for the eight weeks ending July 30, 2016.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact-finding interview within the meaning of the law, however, the claimant is not required to repay the overpayment and the employer's account is subject to charge for the benefits the claimant has received to date in the amount of \$3,704.00 for the eight weeks ending July 30, 2016.

DECISION:

The June 28, 2016, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such

time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits, in the amount of \$3,704.00 to date, is charged to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs