

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY PETERSON

Claimant

APPEAL NO: 07A-UI-08929-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 08-19-07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 12, 2007, 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 October 3, 2007. The claimant participated in the hearing. Lou Ann Wirtz, Operations Manager; Mark Scott, Collections Manager; and Brett Samuel, Operations Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her 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 operations processor for Wells Fargo Bank from May 8, 2006 to August 17, 2007. In early July 2007 the claimant asked for four hours off work the afternoon of July 30, 2007, and the employer approved the request with the stipulation that as soon as the claimant became aware of the specifics of the time she needed off she let the employer know. On July 26, 2007, the claimant asked for the whole day off July 30, 2007, because she was moving and her daughter had a medical appointment. The employer denied her request because another employee was going to be gone and the employer's workload was heavy at that time of the month. The claimant stated she was going to take the day off anyway and would take an occurrence and the employer told her she would receive a final formal written warning. The claimant had been on informal and formal attendance warnings previously and was upset that she was going to be placed on warning again. She prepared a written resignation notice and presented it to Collections Manager Mark Scott who tried to talk her out of resigning until she had at least taken some time to consider her decision but the claimant was adamant and submitted her resignation July 26, 2007, effective August 17, 2007.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

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. While the claimant was upset that she was going to receive a final formal written warning, the employer had no intention of terminating her employment for taking an occurrence July 30, 2007. Although the claimant felt the warning was not necessarily fair, the employer was following its attendance policy and it appears the claimant became angry and quit in protest rather than because she was going to be discharged. The employer tried to talk her into staying but the claimant insisted on leaving anyway instead of trying to ride the warning out and continue her job. Under these circumstances the administrative law judge cannot conclude that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The September 12, 2007, reference 01, decision is reversed. The claimant voluntarily left her employment without 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 benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,560.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs