

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMIKA N JONES

Claimant

APPEAL NO. 13A-UI-10283-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 11/11/12

Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Tomika Jones filed a timely appeal from the August 30, 2013, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on October 3, 2013. Ms. Jones participated. Frankie Patterson of Barnett Associates represented the employer and presented testimony through Jessica Smith.

ISSUE:

Whether Ms. Jones separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tomika Jones was employed by Wells Fargo Bank NA as a full-time Home Preservation Specialist 1 from February 2013 and last performed work for the employer on July 26, 2013. Ms. Jones' regular work hours were 7:00 a.m. to 4:00 p.m. Tuesday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday. Ms. Jones' immediate supervisor was Jessica Smith, Loan Administrator 1.

If Ms. Jones needed to be absent from work the employer's written policy required that Ms. Jones telephone Ms. Smith prior to the scheduled start of her shift. Ms. Smith deemed a voice mail message on her work or cell phone prior to the shift to be acceptable notice. Ms. Smith also considered text messages to be appropriate notice. The formal policy was reviewed with Ms. Jones at the start of the employment and when Ms. Jones started working under Ms. Smith. The attendance policy was also available to employees online. Ms. Jones was aware that she had access to online human resources material including the attendance policy, but did not access that material. The attendance policy also indicated that the employer would deem an employee who was absent for three consecutive days without notifying the employer to have abandoned the employment.

During the period of July 27 through August 2, 2013, Ms. Jones was absent due to illness and properly notified the employer. On August 3, 6, 7 and 8, 2013, Ms. Jones was absent and did

not take any steps to notify the employer. On August 8, 2013, the employer sent a message to Ms. Jones indicating that the employer deemed to have abandoned the employment. Ms. Jones called the toll-free number listed on the letter, but did not make contact with Ms. Smith.

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 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Jones voluntarily quit the employment by being absent three consecutive days without notifying the employer in violation of the employer's attendance policy. Ms. Jones is disqualified for benefits until 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 employer's account shall not be charged for benefits.

DECISION:

The agency representatives August 30, 2013, reference 04, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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