

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KURT COENEN

Claimant

APPEAL NO: 14A-UI-00936-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 12/15/13

Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Wells Fargo Bank (employer) appealed an unemployment insurance decision dated January 16, 2014, reference 02, which held that Kurt Coenen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2014. The claimant participated in the hearing. The employer participated through Manager Andrew Nelson and Employer Representative Kelley Landolphi.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was originally hired in October 2008 but left the employer on January 26, 2013. He testified he remained employed with the employer in a joint venture with USAA but the employer's records confirm he separated from employment on that date. The claimant is apparently litigating that issue but it is not related to the hearing today. The employer rehired him on July 8, 2013, as a full-time home preservation specialist. The claimant went out on bereavement leave on September 9, 2013. He spoke with his supervisor on September 17, 2013, and requested to go on a non-work-related medical leave to enter treatment for alcohol. The employer denied his request for leave under the Family Medical Leave Act on September 18, 2013, due to lack of qualifying hours and automatically placed him on short-term disability from September 9, 2013, through October 13, 2013. Shortly after he entered treatment, his mental health counselor advised him not to return to his previous job due to mental health issues. The claimant contacted the employer to advise them of this fact and to request a different position.

Around October 15, 2013, the claimant requested an extension and his leave of absence was extended to October 20, 2013, and he was scheduled to return on October 21, 2013. He requested another extension and it was denied on October 24, 2013. The employer sent the claimant a letter on November 13, 2013, advising him he was on an unapproved leave of absence and that he had until December 5, 2013, to return medical certification. He was advised that if he was unable to provide the documentation by that date, he needed to contact the employer by telephone. There was no contact and the employer sent the claimant a letter dated December 5, 2013, stating that his employment was terminated for job abandonment.

Approximately one week after December 5, 2013, the Leave Department contacted the supervisor and said it was working with the claimant on finding a new position. The termination was reversed on December 13, 2013, and the claimant was placed on an unpaid job search leave of absence.

The claimant filed an unemployment insurance claim effective December 15, 2013, and has received benefits after the separation from employment in the amount of \$3,168.00. The employer participated in the fact-finding interview by submitting written documentation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer has discharged the claimant for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant left his employment on September 9, 2013, due to a bereavement leave. He then extended his leave due to a non-work-related medical condition and he never returned to his former position. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that: "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Employment Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence in the record establishes that the claimant did, in fact, fail to return to the employment at the end of the leave of absence. Accordingly, the separation from the employment is deemed a voluntary quit and claimant is disqualified for benefits.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied

benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because the employer participated in the fact-finding interview by submitted written documentation. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$3,168.00.

DECISION:

The unemployment insurance decision dated January 16, 2014, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,168.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs