

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C RAMSEY
Claimant

APPEAL NO. 11A-UI-10969-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 06/26/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated August 11, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on September 13, 2011 at which time the claimant participated personally. The employer participated by Mr. Frankie Patterson, Hearing Representative, and Ms. Olga Hamilton, Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: James Ramsey was most recently employed by Wells Fargo Bank beginning October 1, 2010. Mr. Ramsey was hired to work as a part-time Lock Box Clerk I. The claimant was scheduled to work 20 hours per week working 8 hours on Sundays, 8 hours on Mondays and 4 hours on Fridays. His immediate supervisor was Olga Hamilton, Facility Manager.

Mr. Ramsey reported for his first day of scheduled work on October 1, 2010 and was given initial training in his new job. The claimant was scheduled to work Sunday, October 3, 2010 but did not report. The claimant left a message for the manager indicating he was relinquishing his position with the company. Ms. Hamilton contacted Mr. Ramsey by telephone on Monday, October 4, 2010 to verify whether it was the claimant's intention to quit employment. During the conversation Mr. Ramsey stated to Ms. Hamilton, "I expect this will be a long term illness and it is best for me not to return." Ms. Hamilton called the claimant a second time urging the claimant to remain employed and attempting to verify for certain that Mr. Ramsey was relinquishing his new position with Wells Fargo Bank. When the claimant again verified his intention to quit employment, Ms. Hamilton accepted the claimant's resignation.

It is the claimant's position that he was ill due to a spastic colon condition and was unaware as to when he would be able to return to work. Although the claimant is unsure of his statements

during the telephone conversations or the message that he left for Ms. Hamilton, it is the claimant's belief that he did not make statements indicating that he was quitting his job.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the evidence in the record establishes that the claimant left employment. It does. The second question is whether the claimant's reasons for leaving were attributable to the employer. They were not.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

In this matter, Mr. Ramsey worked for one day after accepting re-employment with Wells Fargo Bank and then called in indicating that he would not be reporting back to work. The evidence establishes that the manager, Ms. Hamilton, contacted Mr. Ramsey on two separate occasions to verify whether it was the claimant's intention to remain employed or to quit.

Ms. Hamilton testified with specificity as to the statements made by Mr. Ramsey testifying that the claimant stated, "I expect this will be a long term illness and it is best for me not to return." When Mr. Ramsey verified his intention to leave employment during two separate telephone calls, the employer reasonably concluded that it was the claimant's intention to quit employment and accepted his resignation.

In contrast, Mr. Ramsey was unable to testify with any specificity testifying that it was his general belief that he had not indicated an intention to quit employment.

The administrative law judge notes that Mr. Ramsey had previously been a long-term employee with Wells Fargo Bank and that the employer had provided repeated reasonable accommodations for Mr. Ramsey in the past due to absences because of illness. Based upon the previous history of accommodating the claimant, the repeated calls made by the manager to verify Mr. Ramsey's intention to quit and the specificity of the testimony of the employer's witness, the administrative law judge concludes that the claimant voluntarily left employment for personal reasons that were not attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated August 11, 2011, reference 01, is reversed. Claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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