

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH R PAGE

Claimant

APPEAL NO: 08A-UI-03069-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 02/24/08 R: 02
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wells Fargo Bank, N.A. (employer) appealed a representative's March 19, 2008 decision (reference 01) that concluded Jeremiah R. Page (claimant) was qualified to receive unemployment insurance benefits for the three week period ending March 15, 2008 but was disqualified from that point after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2008. The claimant participated in the hearing. Tammy McConnell appeared on the employer's behalf; one other witness, Jason Sturm, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on December 19, 2005. He worked full time as a collector in the payoff resolution department at the employer's West Des Moines, Iowa home mortgage service center. On February 28, 2008, the claimant tendered his resignation. His last day would have been March 13, 2008, a Thursday. He gave his notice because he was dissatisfied with the pay increase he had been given and because of a belief there was no room for him to grow with the employer. On the same day the employer waived the claimant's notice and terminated his employment immediately, paying him for his net remaining time.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would be disqualified unless it was for good cause attributable to the employer. If the employer discharged the claimant, he would be disqualified only if it was for work-connected misconduct.

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.

871 IAC 24.25 provides that, 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 claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting due to a dissatisfaction with a pay increase or the prospects of growth within the employer are disqualifying reasons for quitting. 871 IAC 24.25(13), (21). The claimant has not satisfied his burden. The claimant's intended separation would have occurred with only one work day remaining for the benefit week ending March 15. Therefore, benefits are denied effective the benefit week beginning March 16, 2008.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The sole reason cited by the employer for discharging the claimant is his tendering of his resignation. While the employer may have a good business reason for not wishing to retain an employee who has tendered his resignation for the duration of the notice period, the claimant's resignation is not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits for the period between the discharge and the date he was intending to quit. Benefits are allowed, if the claimant was otherwise eligible after consideration of other issues such as receipt of vacation pay or severance pay, for the three benefit weeks ending March 1, March 8, and March 15, 2008.¹

DECISION:

The representative's March 19, 2008 decision (reference 01) is affirmed. The claimant voluntarily quit without good cause attributable to the employer effective March 14, 2008. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits

¹ It appears other representative's decisions have been issued that disqualify the claimant for all or part of this period due to the receipt of vacation or severance pay; however, it does not appear that the claimant has appealed those disqualification decisions, and those decisions are not subject to review in this proceeding.

from February 28 through the benefit week ending March 15, 2008, if he is otherwise eligible. The employer is chargeable for any benefits paid for that period. As of March 16, 2008, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer is not chargeable for any benefits after March 16, 2008.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs