

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE D MILLER

Claimant

APPEAL NO: 14A-UI-09554-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 01/26/14

Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 4, 2014 (reference 02) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit for reasons that do not qualify her to receive benefits. The claimant participated at the October 3 hearing with her attorney, Greg Terson. Francis Landolphi represented the employer. Megan Dehamer, the loan adjustment manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in December 2008. She worked as a full-time load adjuster specialist. The claimant went on a medical leave of absence in March 2013. After she exhausted her FMLA in November 2013, she received short-term and then long-term disability.

Initially the claimant went on a leave of absence in March 2013 for medical issues concerning a family member. The claimant then was on a leave of absence for her personal medical issues. While the claimant was on a medical leave of absence, she went to an employer sponsored award meeting in Phoenix, Arizona. The evening of April 6, 2013 the claimant and a male co-worker had too much to drink. The two ended up in the same room that night. When the claimant woke up and realized what was going on, she found the male co-worker on top of her. She immediately told him to stop. Even though the claimant felt he assaulted her, she did not report anything to the local Arizona authorities or timely report the incident to the employer. The claimant did not return to work after the Arizona trip. The claimant told a close friend, who also works for the employer, about the April incident in May 2013.

The claimant tried to go back to work at various times since November 2013. When she went back she was unable to control her anxiety attacks when she saw the male co-worker. In January 2014 the claimant reported the incident to the employer. The claimant asked the employer about a transfer. The employer told the claimant the incident she reported would be confidential. Later the claimant learned the employer had to investigate. The claimant understood the employer talked or would talk to the employee the claimant had talked to in May 2013. The employer made a mistake and talked to another person instead of the person the claimant told the employer they could contact.

The claimant applied for another position, but this position was given to the male employee who was involved in the April 6 incident. In the new position, he would indirectly supervise the claimant's work.

After going through counseling and various treatments, the claimant's physician released the claimant to return to work part time for 12 weeks and the claimant could have no contact with the male employee involved in the April 6 incident. The employer decided they could not accommodate the claimant's work restrictions and did not accommodate the claimant's work restrictions.

When the employer would not accommodate the claimant's work restrictions on August 1 the claimant contacted the employer and resigned effectively immediately. The human resource representative who the claimant talked to on August 1 knew nothing about the claimant's April 6, 2013 incident.

The claimant established a claim for benefits during the week of January 26, 2014. She reopened her claim the week of July 27, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she left employment for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

When a claimant has been on an authorized medical leave of absence, she is eligible to receive benefits after her physician releases her to return to work and the employer does not have her regular or comparable suitable work available for her to do. Iowa Code § 96.5(1)d. The claimant does not satisfy this law because she was released to work with restrictions, she was not released to work full time as she had been working.

When a claimant is compelled to leave because of an illness or injury that is attributable to her employment, the claimant must establish adequate health reasons to justify termination. Before she quits, the claimant must inform the employer she intends to quit unless the employer makes accommodations for the health-related problems. 871 IAC 24.26(6)b.

When the employer decided the claimant's work restrictions could not be accommodated, the employer effectively ended the claimant's employment. The employer knew or should have known the claimant could not work in the presence of the male who assaulted her. Even though the claimant submitted her resignation, the employer gave her no choice because they would not accommodate her physician's work restrictions. The claimant's resignation amounts to an involuntary termination. Therefore, as of July 27, she is qualified to receive benefits. The employer's account is subject to charge.

DECISION:

The representative's September 4, 2014 (reference 02) determination is reversed. The claimant's employment ended as a result of her involuntary termination because the employer would not accommodate her work restrictions. As of July 27, 2014 the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can