

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA L DODGE
Claimant

APPEAL NO. 09A-UI-07453-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 05/07/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(2) – Voluntary Quit – Move to a Different Locality
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a department representative's decision dated May 7, 2009, reference 01, that held she voluntarily quit without good cause attributable to the employer on February 6, 2009, and benefits are denied.

A telephone hearing was scheduled and held on June 1, 2009. The claimant participated. The employer did not participate.

ISSUES:

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

The further issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered all of the evidence in the record, finds: The claimant worked for the employer as a full-time administrative assistant from July 13, 1998, until February 6, 2009. The claimant gave two-week notice to her supervisor that she was leaving employment to move to California to marry her sweetheart. The employer accepted her resignation, but carried her on a 90-day leave of absence, so she could maintain healthcare insurance coverage, and transfer benefits to another Wells Fargo Bank, should she be successful in finding that employment in California.

The 90-day leave of absence expired May 6, 2009, and the claimant was not able to secure Wells Fargo Bank employment in the state of California. The claimant received notice from the employer that her continuing healthcare benefits were discontinued and that her leave had expired.

Although the claimant has had a blood clot condition that requires medication, it has not been an issue regarding her search for employment nor has any physician placed any restriction on her employability.

Although a notice of the date and time for the hearing was mailed to the employer, they failed to call in and participate for the hearing.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant voluntarily quit without good cause attributable to the employer when she resigned in order to move to another locality on February 6, 2009.

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.

Iowa Code section 96.19-18-g(7) provides:

18. "Employment".

g. The term "employment" shall not include:

(7) Services performed by an individual, who is not treated as an employee, for a person who is not treated as an employer, under either of the following conditions:

(a) The services are performed by the individual as a salesperson and as a licensed real estate agent; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(b) The services are performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis, for resale by the buyer or another person in the home or in a place other than a permanent retail establishment, or engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in a place other than a permanent retail establishment; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

The claimant's testimony establishes that she gave two-week notice that she was resigning her employment in order to move to a new locality and that her resignation was accepted by the employer. A leave of absence was limited for the purpose of a continuing healthcare benefit,

and a transfer of other employee benefits, should she obtain new employment in California. The claimant had no intention during the leave period of returning to her former employer.

The administrative law judge further concludes that the claimant is able and available for work and no disqualification is imposed for this reason.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant established that her blood clot condition is controlled by medication and there has been no limitation on her seeking employment nor has there been any restriction imposed by a physician. No benefit disqualification should be imposed for this reason.

DECISION:

The department decision dated May 7, 2009, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to the employer in order to move to a different locality on February 6, 2009, and benefits are denied. The claimant may remove the benefit disqualification by working in and being paid wages equal to ten times her weekly benefit amount. The claimant is able and available for work, and no disqualification is imposed for this reason.

R. L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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