IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KATHERINE COLLEY
4225 VILLAGE LN. APT. 55
WEST DES MOINES, IA 50266-1724

WELLS FARGO BANK NA
C/O BARNETT ASSOCIATES
PO BOX 7340
GARDEN CITY, NY 11530

DIA APPEAL NO. 20IWDUI0215
IWD APPEAL NO. 20A-UI-03877

ADMINISTRATIVE LAW JUDGE DECISION

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.
A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.
The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:
UI law and administrative rules: https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules
UI Benefits Handbook: https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits
Handbook for Employers and forms: https://www.iowaworkforcedevelopment.gov/employerforms
Employer account access and information: https://www.myiowaui.org/UITIPTaxWeb/
National Career Readiness Certificate and Skilled Iowa Initiative: http://skillediowa.org/

IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KATHERINE COLLEY Claimant **WELLS FARGO BANK NA** Employer	**DIA APPEAL NO. 20IWDUI0215** **IWD APPEAL NO. 20A-UI-03877** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/29/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 5, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 28, 2020. The claimant, Katherine Colley, appeared with counsel, Nadine Stille, and presented testimony. The employer, Wells Fargo Bank NA, did not send a representative to participate in the hearing. Official Notice was taken of the administrative file, which included the notice of telephone hearing, the transmittal form transmitting this case to DIA, the decision at issue herein, the appeal request, notice of appearance of counsel, and request to postpone the hearing, which request was withdrawn at hearing.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Katherine Colley began working at the West Des Moines branch of Wells Fargo Bank on March 5, 2019. During that time her job responsibilities changed. At the time of her separation, she was employed full time as an Account Resolution Specialist II. Her immediate supervisor was John Val Carter, III. (Colley testimony)

Colley was diagnosed in November of 2018 with Idiopathic Intracranial Hypertension (IIC). Symptoms caused by her illness included eye damage and increased migraine attacks. Her illness was exacerbated by long hours under fluorescent lighting and staring at a computer monitor. She was treated for this illness by Doctor Kristi Benson. Colley requested accommodations, including a desk lamp and a bigger monitor. She obtained a letter from her physician outlining the accommodations she required. Wells Fargo provided her with a desk lamp. (Colley testimony)

Colley underwent surgery to remove a Pituitary Tumor on April 18, 2019. She was on medical leave for six weeks, returning to work full time on May 25, 2019. By July of 2019, Wells Fargo had provided her with the larger monitor she had requested during her previous request for accommodations. (Colley testimony)

Colley was still not doing well with the fluorescent lights and was still having migraine attacks. Colley ran out of FMLA leave in August of 2019. On or around August 25 to 30, 2019, she requested reduced hours from her supervisor. Carter told her to reach out to HR to see about having a reduction in her work hours. He stated they did not have any part time positions in that department. Colley requested assistance with accommodations on September 4, 2019. (Colley testimony)

She was not contacted about her request until mid-October of 2019, when she was assigned an Accommodations Manager, Natasha Wiliams. Williams informed her she would need to provide a doctor's note, which she provided. Dr. Udaya Kabadi wrote a letter, dated October 30, 2019, stating Claimant had developed "selective dysfunction of pituitary gland which is leading to fatigue, tiredness, etc. I recommend that she works for maximum for (sic) 34 hours a week. In due course over next few months she may be able to return full time." (Exh. A; Colley testimony)

On October 31, 2019, Williams informed her that she would be able to go ahead with a reduction of hours. That same day or the next, they changed the decision, saying Colley would have to go through their third party firm that handled FMLA determinations, Lincoln Financial. Colley then contacted Lincoln Financial.

A week later, on November 7, 2019, someone from Lincoln Financial got back to her and indicated they were confused about why she had to go through them as her FMLA was exhausted. The person who called her took down her information but failed to provide her with a case number during that conversation. Colley was instructed to fill out a specific form for her request which could be found on line. On November 8, 2019, Colley attempted to fill out the form on line but did not have a case number. When she called Lincoln Financial, they could find no record of her case. (Colley testimony)

On November 12, 2019, Colley informed Manager, Candace Cartwright, that she was resigning. She told her that Lincoln Financial could not find her case number and she could not keep working under these conditions without having reduced hours due to the light and the migraine attacks. Cartwright indicated she understood, that Colley had done everything she could and she was sad Colley was leaving them. Colley sent an email to Carter on that same date, stating she was quitting due to medical reasons and this would be her last day. She said she was sorry for the short notice but she was hoping to recover and heal better. (Exh. B; Colley testimony)

On November 13, 2019, Carter responded, telling her in an email that she would still be rehireable. He attached a Team Member Resignation Memo to confirm their discussion on November 12, 2019 and confirming that her decision to leave was a voluntary resignation due to personal reasons. (Exh. C; Colley testimony)

Colley stated she followed the employer's policies for asking for reduced hours as an accommodation to her medical issues. She went to her supervisor first, asking if she could work part time. He told her they could not do that within the department and advised her to reach out to Accommodations to see if they could help her. She informed Carter in August of 2019, that she would have to resign if she could not get a reduction in her hours.

Colley stated current treatment for her condition includes lumbar punctures to relieve the pressure in her head as her body makes too much spinal fluid. Whenever she has a flair-up, she can't look at light. She has had two of these done in this calendar year. She wears sunglasses around the house. Her head feels like someone is squeezing it. She feels

nauseated, tired, and can't function well. Pain relievers don't work to relieve the symptoms. Most of the time, the headache and migraine is still there after taking a pain reliever. (Colley testimony)

Colley stated she is currently looking for part-time work, such as being a server. She loved her job and didn't want to leave. She expressed frustration that they couldn't provide her with accommodations, especially when they told her she could have reduced hours then took it away. (Colley testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant emailed John Carter stating that she needed to resign due to health reasons. The separation was a voluntarily quit and not a discharge from employment.

Iowa Code section 96.5(1)(d) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 871-24.26(6) provides as follows:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

> (2) Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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. Emp't 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)).

Subsection d of Iowa Code § 96.5(1) provides an exception; however, the statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346 (Iowa 1992); *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991)(noting the full recovery standard of section 96.5(1)(d)). Further, an employee's failure to return to the employer and offer services upon recovery from an injury "statutorily constitutes a voluntary quit and disqualifies an individual from unemployment insurance benefits." *See Brockway v. Emp't Appeal Bd.*, 469 N.W.2d 256 (Iowa Ct. App. 1991).

In this case, Claimant voluntarily quit her employment during the process of attempting to obtain an accommodation from her employer for reduced hours. Claimant claims to have quit employment due to illness upon the advice of a licensed and practicing physician and having notified her supervisor of the necessity for the accommodation of having her hours reduced.

Claimant's illness is not attributable to her employer. She has been diagnosed with Idiopathic Intracranial Hypertension and suffers from migraines which are exacerbated by fluorescent lights and computer monitors. Her treating physician recommended not that she cease work, but that she reduce her working hours to 34 hours per week, maximum.

In order to meet the requirements for a non-employment related illness, Complainant must have had a full recovery, had that recovery certified by a licensed and practicing physician, and must have offered to perform services to the employer but no suitable, comparable work was available. Recovery is defined as the ability to perform all of the duties of the previous employment.

Colley has not met these standards. She has not provided certification of her recovery. She testified that she still suffers from migraines and has had two lumbar injections in the last five months, indicating she still suffers from migraines despite no longer being subjected to fluorescent lighting and computer monitors. Furthermore, she indicates she is only looking for part time work as she feels unable to return to full time work due to her illness.

Claimant testified that she requested part time work so she would have time to work due to her medical condition. She further explained that Carter informed her there were no part-time positions in her division and she would have to seek accommodations. At the time claimant resigned, her supervisor indicated they did not have any part-time openings available that he could offer claimant. Although understandably frustrated, Claimant quit before the accommodation process was completed.

The claimant separated from employment due to her medical condition. Claimant stated that she can only work part time and did not state that she has offered to come back to work for her employer. Therefore, the record supports a finding that the claimant has not offered to work for her employer again and has not fully recovered from this non-work related medical condition.

Because the claimant's medical condition is not work-related and she is unable to perform full work duties because of her medical condition, she does not meet the exception in section 96.5(1)(d). Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

DECISION:

The May 5, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant separated from the employment without good cause attributable to employer. Unemployment benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Claimant is encouraged to apply for Pandemic Unemployment Assistance (PUA) if she has not already done so.

_____
Tricia A. Johnston
Administrative Law Judge

June 02, 2020
Decision Dated and Mailed

TAJ/lb

CC: Katherine Colley (by First Class Mail)
Nadine Stille (by First Class Mail and Email)
Wells Fargo Bank (by First Class Mail)
Nicole Merrill, IWD (By Email)
Joni Benson, IWD (By Email)

Note to Claimant: Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at https://www.iowaworkforcedevelopment.gov/pua-information.