

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MYRICK, MOLLY, R**  
Claimant

**APPEAL NO. 12A-UI-11351-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 08/12/12**  
**Claimant: Respondent (2-R)**

Section 96.5(1)(d) – Voluntary Quit Due to Medical Condition

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 13, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 30, 2013. Claimant Molly Myrick participated. Frankie Patterson of Barnett Associates represented the employer and presented testimony through Monica Birmingham and Ines Custovic. The administrative law judge took official notice of the fact-finding materials and marked portions of the fact-finding materials as Department Exhibits D-1 through D-11 for identification purposes.

**ISSUE:**

Whether Ms. Myrick's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Molly Myrick was employed by Wells Fargo Bank on a full-time basis from 2010 until August 17, 2012, when she voluntarily quit upon the advice of a psychiatrist. Ms. Myrick last performed work for the employer on May 9, 2012. Ms. Myrick was on an approved leave of absence from May 10, 2012 through July 16, 2012. The leave of absence was extended through Friday, August 17, 2012 with a return to work date of Monday, August 20, 2012. Ms. Myrick has multiple mental health diagnoses. These include anxiety and depression, along with panic disorder. Ms. Myrick is prone to anxiety attacks. Ms. Myrick was pregnant at the time she last performed work for the employer. Due to the pregnancy, Ms. Myrick elected not to forsake psychotropic medications and her psychiatrist supported that decision.

Ms. Myrick worked as a home preservation specialist. Ms. Myrick was responsible for guiding customers in default on their mortgages through the loss mitigation process. Ms. Myrick was responsible for assisting the customers with getting appropriate documentation to Wells Fargo Bank and for guiding customers through the process that might involve disposing of their property either through a short sale or through surrendering the property to Wells Fargo Bank. Ms. Myrick was responsible for approximately 100 files. Ms. Myrick was responsible for communicating with her assigned customers in a timely and appropriate manner.

In November 2011, Loan Administration Manager Ines Custovic became Ms. Myrick's immediate supervisor. Things did not go well for Ms. Myrick under Ms. Custovic's supervision. Ms. Myrick's mental health issues factored heavily in her perception of her interactions with Ms. Custovic. Ms. Myrick erroneously perceived Ms. Custovic's attempts to direct Ms. Myrick's work as personal attacks. Ms. Myrick erroneously perceived specific interactions with Ms. Custovic as inappropriate or abusive when they were neither. Ms. Myrick erroneously attributed to Ms. Custovic an intention to keep Ms. Myrick under Ms. Custovic's supervision indefinitely and to prevent Ms. Myrick from transferring to another area. Instead, it was the employer's policies, input from Ms. Custovic's supervisor, and hiring decisions made by other prospective supervisors that hindered Ms. Myrick's few attempts to transfer to another area. Ms. Custovic's interactions with Ms. Myrick were professional and were premised solely on the need to provide better customer service. Ms. Custovic did point out to Ms. Myrick, on one or more occasions, obstacles that Ms. Myrick placed in the way of successful performance of her work duties. Ms. Custovic did counsel Ms. Myrick for not returning customer calls in a timely manner and for not following up on other aspects of file processing in a timely manner. Ms. Myrick had started her leave of absence at a time when she felt under attack by Ms. Custovic. Ms. Myrick's relationship with Ms. Custovic continued to factor in Ms. Myrick's discussions with her mental health care providers while Ms. Myrick was on her leave of absence.

While Ms. Myrick was on her leave of absence, her work area went through a reorganization process and Ms. Myrick was re-assigned to a work team led by newly promoted Loan Administration Manager Monica Birmingham. Prior to the July 15, 2012 initial leave of absence end date, Ms. Birmingham contacted Ms. Myrick to discuss the reassignment and to discuss Ms. Myrick's anticipated return to work on that date. The leave was subsequently extended through August 17, 2012. From the time of first contact with Ms. Birmingham in July 2012, Ms. Myrick understood that when she returned to work, she would not be supervised by Ms. Custovic, but would instead be under the supervision of Ms. Birmingham.

On August 17, 2012, the last day of the extended leave of absence period, Ms. Myrick telephoned Ms. Birmingham to notify the employer that, upon the advice of her doctor, she would not be returning to the employment on August 20, 2012. Ms. Birmingham requested that Ms. Myrick provide a written resignation and Ms. Myrick complied. Psychiatrist James Gallagher, M.D., had been providing care to Ms. Myrick since May 24, 2012. Up to that point, Ms. Myrick had been under the care of Psychologist Catalina D'Achiardi-Ressler, Ph.D., who had referred Ms. Myrick to Dr. Gallagher. Both doctors continued to provide care for Ms. Myrick after the referral to Dr. Gallagher. Dr. Gallagher provided Ms. Myrick with a memo, dated August 13, 2012. Ms. Myrick made reference to the memo during her phone call to Ms. Birmingham on August 17, 2012, but Ms. Myrick did not provide the employer with a copy of the memo. The memo states as follows:

To Whom It May Concern:

Because of Ms. Myrick's persistent symptoms, I have advised her to resign from her job. I can think of no conditions that would allow her to prevail successfully in her current employment situation. This decision was not arrived at easily for Ms. Myrick, as she is well aware of the financial consequences. Regardless, I can think of no other option for now.

I think she has done her best to seek out appropriate medical and psychological care, but her symptoms are persistent and would prevent her from successfully executing her job duties.

The memo referenced Ms. Myrick's mental health condition and potential for success in the employment, but did not reference any risk of harm to Ms. Myrick if she returned to the employment. The memo and the recommendation did not reference or factor Ms. Myrick's reassignment to work under Ms. Birmingham. Had Ms. Myrick returned to the employment at the end of the leave of absence, she would likely have encountered Ms. Custovic from time to time, since Ms. Custovic would continue to work in a different area on the same floor of the same building. However, Ms. Custovic's influence on Ms. Myrick's employment would have been limited to input, if any, that Ms. Birmingham solicited when preparing Ms. Myrick's next evaluation.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1-d 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. 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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Myrick voluntarily quit the employment rather than return to work at the end of an approved leave of absence. Ms. Myrick's voluntary quit was for mental health reasons. Ms. Myrick's quit was upon the advice of a licensed and practicing physician. The weight of the evidence establishes that Ms. Myrick's mental health issues predated the employment and were not caused or aggravated by the employment. The employer had made changes in the employment situation that had the effect of removing Ms. Custovic as a stressor. The weight of the evidence indicates that the mental health conditions worsened, not in response to any conduct on the part of Ms. Custovic, but in response to Ms. Myrick discontinuing and otherwise forsaking psychotropic medications while she was pregnant. The weight of the evidence does not support a conclusion that Ms. Myrick was at risk of serious harm if she returned to the employment.

Based on the weight of the evidence and application of the appropriate law, the administrative law judge concludes that Ms. Myrick voluntarily quit the employment without good cause attributable to the employer due to a non-work related medical condition. Ms. Myrick is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Myrick. Ms. Myrick may also requalify for benefits in the future, and the employer's account may become subject to liability for benefits, if Ms. Myrick returns to the employer to offer her services after being released by a doctor to return to the employment, and if the employer at that time declines to re-employ Ms. Myrick in the same or similar capacity.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

**DECISION:**

The Agency representative's September 13, 2012, reference 01 decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant may also requalify for benefits in the future, and the employer's account may become subject to liability for benefits, if the claimant returns to the employer to offer her services after being released by a doctor to return to the employment, and if the employer at that time declines to re-employ the claimant in the same or similar capacity.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs