

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA H MORALES
Claimant

APPEAL NO: 14A-UI-04924-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 03/30/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Wells Fargo Bank, N.A. (employer) appealed a representative's May 5, 2014 decision (reference 01) that concluded Monica H. Morales (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and register a telephone number at which she could be reached for the hearing and did not participate in the hearing. Steven Zaks of Barnett Associates appeared on the employer's behalf and presented testimony from one witness, Melanie Hart. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

OUTCOME:

Reversed. Benefits denied. Overpayment not subject to recovery.

FINDINGS OF FACT:

The claimant started working for the employer on March 5, 2007. She worked full time as lead teller at the employer's Des Moines, Iowa bank branch location. Her last day of work was March 10, 2014.

The claimant had been on maternity leave from about January 17 through March 9, 2014. During the time she was off work the employer had received a complaint on February 14, 2014 that there was money missing from the customer's account. The allegation made by the customer was that the claimant was responsible for the missing money. When the claimant returned to work on March 10, the employer held a meeting with her to discuss the complaint. Rather than respond to the allegations the claimant got up, threw her keys on the table, said, "I quit," and stormed out." The employer had not made any decision as to whether the claimant would be discharged.

The claimant established an unemployment insurance benefit year effective March 30, 2014. A fact-finding interview was scheduled and conducted on May 2, 2014 at 9:30 a.m. The employer has a third-party representative who was notified in advance of the scheduled interview, but when the Agency representative called the employer's representative, no one was available, and no one participated in the fact-finding interview on behalf of the employer. The claimant received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she 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 her. Iowa Code § 96.6-2. Quitting because of a customer complaint or a belief that the employer might discharge the claimant is not good cause for quitting. Rule 871 IAC 24.25(33). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b; Rule 871 IAC 24.10.

The employer did not participate in the fact-finding interview. There has been no showing that the claimant received benefits due to fraud or willful misrepresentation; therefore, since the employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

DECISION:

The representative's May 5, 2014 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 10, 2014, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid unemployment insurance benefits, but she is not required to repay the overpayment and the employer is charged for the amount of the overpayment because the employer failed to participate in the fact-finding interview.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs