

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MARK A COSTANZO**

Claimant

**APPEAL NO. 19A-UI-02417-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 02/24/19**

**Claimant: Appellant (1R)**

Section 96.5-1-d - Voluntary Quit for Medical Reasons

**STATEMENT OF THE CASE:**

Mark Costanzo (claimant) appealed a representative's March 13, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 5, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant performed services from February 11, 2016, to July 10, 2018, and at the end of his employment was working as a full-time account resolution specialist. He filed for Family Medical Leave (FMLA) on an unknown date. His physician wrote something on the FMLA document like he "could not work until he was ready to go" or he was unable to work for a "certain time" due to depression/anxiety. The supervisor told the claimant that everything looked good and to let him know when the claimant could return. The employer referred the claim to Liberty Mutual, the claim carrier. The employer issued the claimant a letter stating the coverage was denied but he could resubmit his claim. The claimant did not read the document to understand why the claim was denied. The claimant was not released to return to work by his physician, did not return to work, or resubmit his claim.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to a medical condition under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

The issue of whether the claimant is able and available for work is remanded for determination if deemed appropriate.

#### **DECISION:**

The representative's March 13, 2019, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded for determination deemed appropriate.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs