

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDY MILLER

Claimant

APPEAL NO. 07A-UI-10626-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 10/21/07 R: 02
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lindy Miller (claimant) appealed a representative's November 13, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wells Fargo Bank, N.A. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 4, 2007. The claimant participated in the hearing and presented testimony from one other witness, Cynthia Miller. Shawn Foy appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 12, 2005. She worked full time as a collector at the employer's West Des Moines, Iowa office. The claimant wished to take a trip from October 3 through October 21, 2007; however, she had insufficient paid time off available. In, perhaps, July, she approached her supervisor's supervisor and asked whether it might be possible for a work schedule to be arranged so that she could take the trip during that time but yet only miss one unpaid day; the supervisor responded to the effect that it was possible something could be worked out. However, the claimant never submitted a regular written request for time off, and there was no formal approval.

On the contrary, on several occasions in August and September, the claimant's immediate supervisor, Mr. Foy, told her that he could not approve of her being absent for that entire time. After the claimant continued to press the issue, a meeting was held between the claimant, Mr. Foy, and Mr. Foy's supervisor on September 19. During that meeting, both supervisors explained to the claimant that it would not be feasible or permissible for the claimant to be absent for the period she wished. They advised her that if she proceeded with her plans, she

would be deemed to be absent without leave and would be subject to disciplinary action including potential termination. She could choose to stay and work and retain her position or could choose to take her trip and lose her position. The claimant asked for a pen and paper and wrote out a resignation notice, indicating that her last day of work would be September 30.

On September 21, 2007, the employer advised the claimant that she would not be required to work out her notice period but that she would be paid through September 30. The basis for the employer's decision to end the claimant's work prior to the resignation effective date was concern regarding the claimant's attitude in the workplace.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

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.

The claimant asserts that her separation was not "voluntary," as she had not desired to end the employment; she argues that it was the employer's action of denying a request for vacation that she felt had been previously granted and which she felt reasonably the employer should have granted which led to the separation, and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving rather than performing work as assigned or leaving when she had not been told she was discharged. 871 IAC 24.25.

Here, the claimant had the choice as to whether to stay in her employment or leave and take the vacation trip. She did not have to choose between quitting or being fired, she had to choose between the vacation and her job. She chose the vacation, and on September 19 voluntarily advised the employer she would leave employment as of September 30 to pursue that choice; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving in order to take a vacation is not good cause for quitting. 871 IAC 24.25(25). The claimant has not satisfied her burden. Benefits are denied as of September 30, 2007.

The fact that subsequent to the claimant's September 19 resignation the employer discharged her on September 21 does not change this outcome. Where an employer has discharged a claimant who has given notice without good cause prior to the end of the notice period, at most the claimant would have eligibility for the period of time between the discharge and the effective

date of the quit. 871 IAC 24.25(38). In this case, the claimant did not make a claim for unemployment insurance benefits until after September 30, 2007, so there is no period of eligibility.

DECISION:

The representative's November 13, 2007 decision (reference 01) is affirmed. The claimant voluntarily quit without good cause attributable to the employer effective September 30, 2007. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons. As of September 30, 2007, 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 employer's account is not subject to charge.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw