

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH R OLSON
Claimant

APPEAL NO. 10A-UI-01708-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 12/27/09
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 29, 2010, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 11, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. John O'Fallon participated in the hearing on behalf of the employer with a witness, Sonya Gallardo.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from April 2, 2001, to August 21, 2009. She requested and was granted a leave of absence under the Family and Medical Leave Act (FMLA) because her husband was in an accident and she needed to care for him while he recovered from his injuries. The claimant knew that her FMLA leave would expire on December 1, 2009.

When the FMLA leave expired on December 1, the claimant still was not able to return to work due to her husband's medical condition. Her supervisor told her that she could request additional unpaid leave to protect her being able to return to work, but the claimant said she was not interested. In mid-December 2009, the claimant's manager contacted her by phone and informed her that she had to choose: (1) to request additional unpaid leave, (2) to return to work full-time, (3) to return to work part-time, or (4) to resign.

The claimant never accepted any of the choices offered to her. Instead, she requested that the employer state in writing what the manager had told her verbally. The employer did not provide the letter setting forth the choices. On December 29, 2009, a letter was sent to the claimant notifying her that the employer considered her to have resigned when she did not contact the employer with her choice. She did not want to request extended leave without pay because she needed to be able to access her retirement funds.

As of the date of the hearing, the claimant had not offered to return to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a.

871 IAC 24.22(2)j(1)(2)(3) provides:

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Under the rule, the claimant is deemed to have voluntarily quit employment because she did not return to work after her leave expired. The fact that the employer would not put her choices in writing does not change this result. Even with a written request it is very clear that she still would not have requested additional unpaid leave, returned to work full-time or part-time, or resigned.

Iowa Code section 96.5-1-c provides that an individual shall not be disqualified for voluntarily quitting if:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The evidence fails to establish that the claimant has offered to return to work or that her husband has recovered sufficiently so that she can return to work full time for the employer. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible, **or** she shows that she has satisfied the conditions for receiving benefits under Iowa Code section 96.5-1-c.

DECISION:

The unemployment insurance decision dated January 29, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible, or she shows that she has satisfied the conditions for receiving benefits under Iowa Code section 96.5-1-c.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs