IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LASHAUN RUNNELS
Claimant

STONEHILL CARE CENTER
Employer

APPEAL NO. 14A-UI-06979-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/01/14
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.22(2)(j)(1) – Leave of Absence
Iowa Code Section 96.5(1) – Layoff
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Lashaun Runnels filed an appeal from the June 19, 2014, reference 01, decision that denied benefits effective June 1, 2014, based on an agency conclusion that she was not able to work due to pregnancy. After due notice was issued, a hearing was started on July 29, 2014. The hearing that day addressed the timelines of the claimant's appeal. The able and available issues had been erroneously omitted from the hearing notice and the claimant was unwilling to waive formal notice on issues, so the hearing was rescheduled to August 18, 2014. On that day, the hearing was interrupted by law enforcement activity at the claimant's home, so the hearing was rescheduled to conclude on September 4, 2014. On all three days, Ms. Runnels participated. On all three days, Beth Schmitt represented the employer. The administrative law judge heard testimony from Ms. Runnels, Ms. Schmitt and Kathy Selle. Exhibits A, 1 and 2 were received into evidence. The administrative law judge took official notice of the agency's administrative record (DBRO and KCCO).

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether the claimant was able and available for work within the meaning of the law from the time she established the claim for benefits that was effective June 1, 2014.

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 19, 2014, Iowa Workforce Development mailed a copy of the June 19, 2014, reference 01, decision to claimant Lashaun Runnels at her last-known address of record. The decision denied benefits effective June 1, 2014, based on an agency conclusion that Ms. Runnels was

unable to work because of pregnancy. The decision contained a warning that an appeal from the decision must be postmarked by June 29, 2014 or received by the Appeals Section by that date. Ms. Runnels received the decision on or about June 21, 2014. On June 26, 2014, Ms. Runnels went to the Dubuque Workforce Development Center, completed an appeal form and delivered the completed form to the Center staff so that the appeal could be faxed there and then to the Appeals Section. The Center staff prepared a fax cover sheet dated June 26, 2014. The Dubuque Workforce Development Center staff attempted to fax the appeal on June 26, 2014, but the Appeals Section did not receive the appeal on that date. When Ms. Runnels did not receive notice of a hearing, she returned to the Dubuque Workforce Development Center. On July 7, 2014, the Dubuque Workforce Development Center re-faxed the appeal to the Appeals Section. The Appeals Section received the appeal on July 7, 2014.

Ms. Runnels was employed by Stonehill Care Center as a full-time cook/dietary aide from January 2013 and last performed work for the employer on May 13, 2014. Ms. Runnels usual work hours were 11:00 a.m. to 7:30 p.m. Ms. Runnels had Fridays and every other weekend off. Ms. Runnels was responsible for preparing meals and for assisting with serving meals. The work included lifting large pans of food that might weight 25 pounds and placing them in buffet warmers. Ms. Runnels' immediate supervisor was Kathy Selle, Food Service Director.

Ms. Runnels left work early due to pregnancy-related illness on May 13, 2014. She left with the supervisor's approval. Ms. Runnels had learned on May 3, 2014 that she was pregnant. Ms. Runnels was suffering from pregnancy-related abdominal pain. Ms. Selle was aware that Ms. Runnels was pregnant. Ms. Selle was aware that Ms. Runnels was pregnant.

Ms. Runnels continued to properly report absences due to the same issues through May 19, 2014. On May 19, 2014, Beth Schmitt, Human Resources Director, telephoned Ms. Runnels to discuss her continued absences. Ms. Schmitt had been unaware that Ms. Runnels was pregnant. At the time of the call, Ms. Runnels told Ms. Schmitt that she was pregnant and had been suffering abdominal pain. Ms. Runnels told Ms. Schmitt that she would be going to a doctor. Ms. Schmitt told Ms. Runnels that because of the continued absence, Ms. Runnels needed to pick up Family and Medical Leave Act materials to apply for FMLA leave. Ms. Schmitt explained the particulars of the FMLA application process and told Ms. Runnels that she needed to provide the certification form to her doctor and return the application materials within 15 days to preserve the employment. Though Ms. Runnels had not previously requested FMLA leave, Ms. Schmitt deemed May 6, 2014 to be the effective leave request date. Ms. Schmitt used that date, even though Ms. Runnels had reported for work after that date and even though there had been no discussion regarding an FMLA leave prior to May 19, 2014. Ms. Runnels told Ms. Schmitt that she would come to the workplace right away to collect the materials. Ms. Runnels did not follow immediately through.

On May 27, 2014, Ms. Schmitt again contacted Ms. Runnels regarding the need for Ms. Runnels to collect the FMLA application materials and return them within the 15-day deadline to preserve her employment. Ms. Runnels reported to the workplace that day, completed the employee portion of the FMLA application, and took the medical certification form with her. At the time of the contact on May 27, Ms. Runnels told Ms. Schmitt that she was waiting to receive her "card" so that she could go to the doctor. Ms. Schmitt understood that Ms. Runnels was referring to a Title 19 Medicaid card. Ms. Runnels had previously sought service at an emergency room and had been directed to follow up with an ObGyn. Ms. Runnels had applied for a Title 19 Medicaid card on May 3, the same day she learned that she was pregnant. A Department of Human Resources representative had told Ms. Runnels that it could take a month to receive the Medicaid card. Ms. Runnels had been in ongoing contact with DHS because she was anxious to get the card so she could follow up with an ObGyn. The emergency room staff declined to assist in completing the FMLA medical certification.

Though Ms. Runnels had not acted on the FMLA application prior to May 27, she had continued to properly report her absences. On or about May 27, Ms. Schmitt directed Ms. Selle to take Ms. Runnels off the work schedule until Ms. Runnels' doctor indicated Ms. Runnels could return to work.

Ms. Runnels established a claim for benefits that was effective June 1, 2014. On June 16, 2014, Ms. Runnels and Ms. Schmitt participated in a fact-finding interview to discuss Ms. Runnels' ability to work and availability for work. Up to that time, Ms. Runnels had continued her absence from the employment and had not provided the employer with a FMLA medical certification to support her continued absence from the employment. At the time of the fact-finding interview, Ms. Schmitt told the claims deputy that Ms. Runnels was still considered an employee with Stonehill. After the fact-finding interview, Ms. Schmitt went on vacation. On or about June 25, 2014, while Ms. Schmitt was on vacation, Ms. Runnels left a voicemail message at the workplace to inquire about her work status. Ms. Runnels indicated in her message that she had medical documentation and was inquiring to see whether she still had a job. On June 25, 2014, Ms. Runnells had been able to get in to see an ObGyn and obtained a note from her doctor that indicated she was under the doctor's care, but was able to work without restrictions at that time. Ms. Runnels did not provide the employer with the doctor's note. Ms. Runnels did not take the doctors' note to the employer. The employer did not return Ms. Runnels' call. On July 1, 2014, Ms. Schmitt sent Ms. Runnels a letter advising her that her employment had been terminated due to her failure to provide the FMLA medical certification materials.

Ms. Runnells discontinued her claim for unemployment insurance benefits after the week that ended August 9, 2014. During the period when the claim was active, Ms. Runnels at least two employer contacts each week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with

benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The evidence in the record establishes that Ms. Runnels' appeal was filed on June 26, 2014, when she delivered the completed appeal to the staff at the Dubuque Workforce Development Center. Any error or delay thereafter in transmitting the appeal from Dubuque to the Appeals Section in Des Moines was attributable to Workforce Development, not Ms. Runnels. Because the appeal was filed by the June 29, 2014, deadline, the appeal was timely and the administrative law judge had jurisdiction to rule on the merits of the appeal.

Both parties behaved as if Ms. Runnels was on an approved leave of absence from May 13, 2014 through at least the June 16, 2014 fact-finding interview. The employer affirmed at that time, in the context of a fact-finding interview, that Ms. Runnels was still an employee of Stonehill. Ms. Runnels was unable to comply with the employer's request for FMLA medical documentation prior to June 25, 2014 because she did have the ability to pay for ObGyn services and could not otherwise obtain the required medical certification materials. As soon as Ms. Runnels had the ability to comply with the medical certification requirement, she saw a doctor and the doctor released her to return to work without restrictions. At that point, there would be no need for medical certification documentation going forward, because Ms. Runnels had been released to return to work. However, there would still be need for medical documentation to cover Ms. Runnels' absence during the period of May 13 through June 24. The emergency room would not provide such documentation. The ObGyn that Ms. Runnels saw on June 25, 2014 would likely not provide medical documentation for a period that preceded that doctor's involvement in Ms. Runnels care. The weight of the evidence indicates that Ms. Runnels continued to reasonably believe she was still job-attached, or should be considered so, at the time she made contact with the employer on or about June 25, 2014 to inquire about returning to work. There was a lapse in communication within the workplace and Ms. Schmitt did not get the message that Ms. Runnels had called about returning to work.

The weight of the evidence indicates that the employer ended the employment on July 1, 2014.

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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(j)(2).

The weight of the evidence establishes that the employer ended the employment, rather than return Ms. Runnells to the employment at the end of the leave of absence. Ms. Runnells did not voluntarily quit. The separation is deemed a layoff and would not disqualify Ms. Runnels for unemployment insurance benefits. Ms. Runnels would be eligible for benefits, provided she is otherwise eligible. Because the separation was not based on a voluntary quit or a discharge for misconduct, the employer's account would not relieved of liability for benefits paid to Ms. Runnels. See Iowa Code section 96.5(1) and (2)(a), regarding voluntary quits without good cause attributable to the employer and discharges for misconduct in connection with the employment.

Iowa Code section 96.4(3) provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
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> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) provide:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
>
> a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.
>
> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1), (35) and (10) provide:

> Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.
>
> (1) An individual who is ill and presently not able to perform work due to illness.
>
> (35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.
>
> (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The weight of the evidence indicates that Ms. Runnels did not meet the work ability and availability requirement prior to June 25, 2014. Up to that time, Ms. Runnels was off work due to pregnancy-related illness. Ms. Runnels is not eligible for benefits for the period of June 1, 2014 through the benefit week that ended June 21, 2014. Effective the benefit week that ended June 28, 2014, Ms. Runnels met the able and available requirements and was eligible for benefits, provided she met all other eligibility requirements.

DECISION:

The claims deputy's June 19, 2014, reference 01, decision is modified as follows. The appeal in this case was timely. The claimant was on a leave of absence until June 25, 2014, when she contacted the employer about returning to the employment. The claimant was laid off effective July 1, 2014, when the employer elected to end the employment. The separation from employment did not disqualify the claimant for benefits. The employer's account may be charged for benefits. The claimant was not able and available for work through the benefit week that ended June 21, 2014 and was not eligible for benefits for the period of June 1, 2014 through June 21, 2014. Effective the benefit week that ended June 28, 2014, the claimant was able and available for work and was eligible for benefits, provided she meets all other eligibility requirements.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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