

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY L POISEL
Claimant

APPEAL NO. 13A-UI-11161-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 07/21/13
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 8, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on November 13, 2013. Claimant participated. Employer did participate through (representative) Mary Eggenburg, Benefits Specialist, and Sarah Cavan, Nurse Manager. Department's Exhibit D-1 was entered and received into the record.

ISSUES:

Did the claimant file a timely appeal?

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a staff nurse beginning in August 2008 through June 26, 2013, when she was voluntarily quit.

The claimant was working the weekend package. She knew that in order to keep that package she had to meet attendance requirements. She consistently failed to meet the attendance requirements she says in part due to domestic abuse she was suffering. At a March 13, 2013 the claimant notified the employer about the domestic abuse and the employer, through Ms. Caven offered her a referral to the employee assistance program. The claimant could not articulate what she wanted the employer to do to accommodate her situation other than overlook her poor attendance. While the claimant's situation is sad, there was nothing the employer could do to rescue her. The claimant was seeing a counselor/psychologist during this time period. The claimant was given ample warning that if her attendance did not improve she would be removed from the weekend package. The claimant eventually removed the abuser from her life.

The employer notified the claimant that due to her poor attendance she was being removed from the weekend package. The claimant was removed from the weekend package on May 12, 2013. The claimant continued to work the new hours. The employer then received an anonymous call that implicated the claimant in misuse of narcotics. The employer, a hospital, was obligated to investigate. The employer found one instance, on June 16, where the claimant had not charted whether she had administered or wasted Dilaudid. When the claimant learned that the employer was investigating, she voluntarily quit.

The claimant received her decision which had a due date of August 18, 2013. August 18 was a Sunday so she was going to be given until Monday August 19, 2013 to file her appeal. On August 19 she contacted her local office and was told that it was too late to file her appeal. She was given incorrect information by her local office. She filed the appeal as soon as she realized she had been given incorrect information by her local office.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because she was given incorrect information by her local workforce office. Thus, her appeal shall be considered timely.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.6(2). 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).

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.

871 IAC 24.25(27) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant was given fair warning that she had to maintain acceptable attendance in order to stay on the weekend package. She had the ability to control whether she continued the circumstances in her life that were causing her to miss work. The employer was not obligated to excuse the claimant's poor attendance. The claimant's removal from the weekend package was a justified disciplinary measure. The claimant continued to work the new hours also evidencing an acquiesce to the new working hours. The claimant did not quit until she found out the employer was conducting an investigation into alleged misuse of narcotics. The employer was obligated to investigate. The claimant's decision to quit because she did not agree with the employer conducting an investigation is not good cause for voluntarily leaving the employment and benefits must be denied.

DECISION:

The August 8, 2013, (reference 01) decision is affirmed. The claimant's appeal shall be accepted as timely. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs