

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA PAUL
Claimant

APPEAL NO: 09A-UI-07794-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

OC: 03-29-09
Claimant: Appellant (1)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 12, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing, as required by, the hearing notice.

ISSUE:

The issue is whether claimant's appeal is timely and whether the claimant voluntarily left her position due to a non-work-related injury or illness.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on April 29, 2009. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 9, 2009. That date fell on a Saturday so the appeal was due May 11, 2009. The appeal was not filed until May 27, 2009, which is after the date noticed on the disqualification decision. The claimant testified she attempted to fax her appeal letter from a lady in Leon's fax machine. She stated she sent it two times but it did not go through on May 7, 2009. She tried to do it again toward the end of the following week but then started a new job and was not aware it has not gone through. Under these circumstances the administrative law judge must conclude that the claimant's appeal is timely.

The claimant was employed as a full-time stocking associate for Ozark Automotive Distributors from February 19, 2005 to November 3, 2008. She suffered a non-work-related medical condition and was unable to work pursuant to medical advice from a treating physician. The employer placed her on FMLA for at least 2 years but finally felt it could no longer hold her job open for her. She had not yet received a full medical release from the treating physician at the time the employer sent her a letter stating her employment was terminated November 3, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is separated from her employment without good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. 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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant had not been released to return to full work duties at the time the employer sent her a letter terminating her employment and the employer is not obligated to accommodate a non-work-related medical condition. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The April 29, 2009, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible or until such time as the claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css