IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BRANDY L MASTELLER Claimant **MERCY CLINICS INC** Employer	**APPEAL 19A-UI-10212-AD-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/20/19** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On December 20, 2019, Brandy Masteller (claimant) filed an appeal from the December 9, 2019 (reference 02) unemployment insurance decision that found she was not eligible for benefits.

A telephone hearing was held on January 21, 2020. The parties were properly notified of the hearing. The claimant participated personally and with witness Jason Masteller, her husband. Mercy Clinics Inc. (employer) did not register a number for the hearing and did not participate.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the above address on December 9, 2019. That was claimant's correct address on that date. Claimant is unsure when specifically, she received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by December 19, 2019. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant appealed the decision via mail on December 20, 2019. Claimant has several impairments which make it difficult for her to use a computer, sit, type, and think clearly. Her impairments and medications therefore make her overly tired, and she sometimes sleeps for a

day or more at a time and is unable to get or review her mail. Claimant received two decisions around the same time and was confused about whether the decisions were related, had different due dates, and so on. The second decision had an appeal deadline of December 21, 2019. See 19A-UI-10213-AD-T.

Claimant worked for employer full-time as a medical receptionist. Claimant's first day of employment was July 16, 2018. The last day claimant worked on the job was in April 2019. Claimant's immediate supervisor was Angie Phillips. Claimant separated from employment on May 22 or 23. Claimant quit on that date.

In February 2019, claimant requested a day off to travel to Texas to see her daughter graduate. This request was denied. This denial was very distressing for claimant, as she had already purchased tickets and a hotel room for her and her family. She did not understand why she could not take a day off. She also could not understand why fellow receptionists would not agree to cover for her on that day. Employer told her she would be considered to have abandoned her job if she was absent the day she requested off without permission. Claimant found the work environment to be generally stressful as well. She felt she was not appropriately trained but was still expected to know everything, and felt feedback from her employer was harsh and not constructive.

In April 2019, claimant experienced a debilitating migraine. She took medical leave around the beginning of April. Shortly thereafter, she received a letter from employer stating her job would not be held for her and, once she was released, she would have 30 days to find a position with employer or she would be discharged. Claimant did not know if or when she would be released and did not believe she would be able to find a position within 30 days. She sent an email to Phillips and clinic co-director Connie Alexander on May 22 or 23, stating she was resigning.

Claimant's physician has not made a determination as to whether these impairments were caused or aggravated by her employment. Claimant had issues with anxiety, depression, and migraines prior to the issues at work beginning. Claimant continues to suffer from these impairments and is no longer searching for employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the December 9, 2019 (reference 02) unemployment insurance decision that found claimant is not eligible for benefits is AFFIRMED.

I. Is the appeal timely?

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

> 1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
> (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark

> on the envelope in which it is 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.
> (b)
> (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

> 2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.
>
> a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
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> b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
>
> c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.
>
> d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge finds claimant's delay in filing the appeal was not unreasonable, as determined after considering the circumstances in this case. Claimant appealed the decision via mail on December 20, 2019. Claimant has several impairments which make it difficult for her to use a computer, sit, type, and think clearly. Her impairments and medications therefore make her overly tired, and she sometimes sleeps for a day or more at a time and is unable to get or review her mail. Furthermore, claimant received two decisions around the same time and was confused about whether the decisions were related, had different due dates, and so on. The second decision had an appeal deadline of December 21, 2019. See 19A-UI-10213-AD-T. In these circumstances, a one-day delay in filing the appeal is not unreasonable, and the principles of due process support a finding that claimant's appeal is timely.

II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause ?

Because the administrative law judge finds claimant's appeal is timely, the next issue that must be addressed is whether the separation from employment was disqualifying.

Iowa Code section 96.5(1)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

> 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;
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> *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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> **(6)** Separation because of illness, injury, or pregnancy.
>
> *a. Nonemployment related separation.* The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
>
> *b.* Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable

> to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "*b*" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd*., 883 N.W.2d 179 (Iowa 2016). "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". Id. (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa 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 §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Claimant has not carried her burden of proving her quitting was with good cause attributable to employer. Claimant resigned because she did not know if or when she would be released and did not believe she would be able to find a position within 30 days, as required by employer. While the administrative law judge understands why claimant resigned and is sympathetic to the reason, it does not constitute good cause attributable to the employer under Iowa law.

The administrative law judge also notes claimant did not prove her impairments were caused or aggravated by her employment; that she informed the employer of the work-related health problem; and that she informed employer that she intended to quit unless the problem was corrected or she was reasonably accommodated. Claimant has not returned to work and offered her services and does not believe her impairments will allow her to work moving forward.

DECISION:

The December 9, 2019 (reference 02) unemployment insurance decision is AFFIRMED. Claimant is not eligible for benefits until she earns wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements.

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Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn