

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NANCY J WILDMAN
Claimant

COLONY BRANDS INC
Employer

APPEAL 16A-UI-06401-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/15
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code §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 an appeal from the May 17, 2016, (reference 04) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 5, 2016. The claimant participated personally. Dr. Daniel Woods also testified for the employer. The employer participated through Teah Shirk, human resources. Department exhibits D-1 and D-2 were received. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?
Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a QA (quality assurance) inspector and was separated from employment on April 15, 2016, when she quit without notice. Continuing work was available.

The claimant suffers from spinal arthritis and has pain in her back that runs to her leg. The pain also causes swelling in her leg. The condition was not as a result of a work-related injury and no worker's compensation claim was filed by the claimant. The claimant was not advised by her doctor, Dr. Daniel Woods, that she should quit her employment due to her condition but agreed that sitting periodically could help. There was disputed evidence as to whether the claimant was allowed to take seated breaks when needed, in addition to her two regular 15-minute breaks each shift. The claimant reported even if she had been permitted to sit periodically, she could not have continued work due to the condition.

An unemployment insurance decision was mailed to the claimant's last-known address of record on May 17, 2016. The claimant does not know when she received the decision, but indicated mail sent from Des Moines usually arrived in about three days, and she checks her mail almost daily. The decision denied benefits to the claimant and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 27, 2016. The claimant likely received the decision within the ten-day period for appealing the decision. She submitted her appeal via fax on June 6, 2016 which is after the time period for appealing had expired. The claimant delayed in filing her appeal because she was confused and believed she would qualify based on prior information when she contacted IWD at the time of her separation. The claimant was unable to provide specific dates, information or names of IWD representatives with regard to the filing of her appeal and any contact with IWD representatives.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed on June 6, 2016, after the deadline for appealing expired. The next question is whether the claimant had a reasonable opportunity to file 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 claimant filed her appeal late because she believed she would receive benefits. The claimant furnished no other information to explain why there was a delay in receipt until filing of the appeal. Based on the evidence presented, the administrative law judge concludes that the claimant had a reasonable opportunity to file a timely appeal and her failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

However, in the alternative, even if the claimant's appeal was timely filed, the claimant would be disqualified for benefits based on the reason for her separation.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(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.

In this case, the claimant's medical condition is not work-related and she was unable to perform full work duties because of the illness or injury. No credible evidence was presented to establish the claimant was advised to quit the employment or that a treating medical professional determined the illness was work related. For unemployment insurance benefits purposes, the employer was not obligated to accommodate a non-work related medical condition. Further, the claimant testified even if the employer had allowed her to sit and take additional breaks, she still would have resigned due to her personal medical condition. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

DECISION:

The unemployment insurance decision dated May 17, 2016, reference 04, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs