

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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BLUE RIDGE PAPER PRODUCTS INC
DAIRYPAK DIV
C/O GARY WILLIAMS
PO BOX 4000
CANTON NC 28716-4000

Appeal Number: 05A-UI-07529-M
OC: 06/26/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 15, 2005, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 12, 2005 at Davenport. Claimant participated. Employer participated by Kathleen Harbron, Human Resource Representative. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 17, 2005. Claimant called in sick

on June 20, 2005. Claimant was then hospitalized on June 21, 2005 for a serious illness. Claimant went through the employee assistance program at work for the hospitalization. Claimant was not capable of giving notice of his absences after June 21, 2005 due to the medication he was taking. Claimant was released to return to work effective June 29, 2005. Claimant called in on June 27, 2005 to ask for his job back in preparation for his return. Claimant was told that he had been discharged for three no call absences effective June 23, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant quit for good cause attributable to employer. The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because employer discharged claimant prior to his release from the hospital and prior to his release to return to work. Claimant was clearly absent due to illness during the period in question. But for the first day he was not capable of giving the employer notice of the need to be off work. Promptly upon his release from the hospital he contacted the employer about his job. This is a separation for cause attributable to employer. Claimant could not notify the employer due to his illness and the medication he was taking. Absences due to illness are excusable. Benefits allowed.

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.

DECISION:

The decision of the representative dated July 15, 2005, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

mdm\tjc