

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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LITTLE ROCK AR 72201-1110

Appeal Number: 04A-UI-00057-ET
OC 11-23--03 R 03
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, 2nd 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-a – Voluntary Leaving – Illness or Injury
871 IAC 24.26(6) – Separation due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a decision dated December 30, 2003, reference 02, that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 27, 2004. The claimant participated in the hearing. Charlie Hufford, General Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time sales associate for Dillard Department Stores from March 25, 2002 to October 6, 2003. The claimant suffered from diagnosed work-related stress and her medical provider wrote a note excusing her from work for 30 days (Claimant's Exhibit A). The claimant provided the note to the employer and maintained contact with Jerry Small, her direct supervisor, during the time she was off work. Upon receiving a full medical release November 21, 2003, the claimant returned and offered her services to the employer but the employer considered the claimant's employment terminated effective October 6, 2003, because as a limited part-time employee she was not eligible for FMLA or a leave of absence exceeding one week and was told by the employer she had to reapply for her job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon her release to return to work from a non-work related injury.

871 IAC 24.26(6)a provides:

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.

The claimant returned to the employer November 21, 2003, to offer her services after recovering from her illness and her return evinces an intention to continue working. While the employer's policy does not allow limited part-time employees to take a leave of absence that exceeds one week in duration and the claimant was not eligible for FMLA, the issue is not whether the claimant's absence was covered by the employer's policy but whether her absence disqualifies her from receiving unemployment insurance benefits. The claimant notified the employer of the necessity of her absence, had a medical statement excusing her from work for 30 days, secured a full release without restrictions and returned to the employer to offer her services but the employer told her she would have to reapply because it terminated her employment October 6, 2003. Consequently, under Iowa law, the separation is attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The December 30, 2003, reference 02, decision is reversed. The claimant's separation is attributable to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf