

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANEL L PELC

Claimant

APPEAL NO. 10A-UI-06098-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & COMPANY

Employer

Original Claim: 04/11/10

Claimant: Appellant (5)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.22(2)j – Leave of Absence
871 IAC 24.25(35) – Separation Due to Illness or Injury
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Janel L. Pelc (claimant) appealed a representative's April 21, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Sears Roebuck & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 16, 2010. This appeal, addressing the claimant's eligibility during a claim year effective April 11, 2010, was consolidated for hearing with one related appeal, 10A-UI-06097-DT, addressing the claimant's eligibility during a claim year effective April 12, 2009. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

Is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on June 1, 2009. She worked full-time as a sales and service representative at the employer's West Des Moines, Iowa call center. She typically worked from 4:00 p.m. to 12 a.m., five nights per week, having off on Wednesday and Saturday nights. Her last day of work was on or about February 28, 2010. The claimant had been absent on a leave of absence for treatment of substance abuse from about December 2009 into February 2010. She worked several days in February 2010. However, she then went on

another leave of absence for other health issues. The employer approved the leave through about March 31, 2010. While she was off on the additional leave, she requested the employer if she could be transferred to a day shift due to transportation issues. Part of the claimant's health issues included having very poor vision which had been worsening. Since about August 2009, she had been obtaining transportation with a coworker. If she could work on a day shift, she could utilize public transportation. However, even in March the claimant was becoming unable to work a full-time shift. As a result, when the claimant's leave expired at the end of March, she informed the employer that she was unable to return. As a result, her employment ended.

In June 2010, her doctor confirmed to her that she was not able to work a full time job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee—where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer—where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work, unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b. The claimant has not satisfied her burden. Benefits are denied.

The remaining issue is whether the claimant is otherwise eligible as being able and available for work. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. This also means that the claimant must have a reasonable expectation of securing other employment during the same hours and for the same number of hours worked as when her wage credits were accrued, so that she is available to the same degree and to the same extent as when the wage credits were accrued. 871 IAC 24.22(2)f. Since March 2010, the claimant has not been able and available as she was when her base period wages credits were accrued.

DECISION:

The representative's April 21, 2010 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 31, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is not able to work and available for work effective March 31, 2010.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw