

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

ANGELA J HILLHOUSE
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RED OAK IA 51566

K MART CORPORATION
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ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03781-RT
OC: 03-07-04 R: 01
Claimant: Appellant (1)

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 Quitting
Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Angela J. Hillhouse, filed a timely appeal from an unemployment insurance decision dated March 26, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 27, 2004 with the claimant participating. Christine Adams, Human Resources Manager, participated in the hearing for the employer, K Mart Corporation. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time cashier and stocker from July 5, 2001 until she voluntarily quit on or about October 23, 2003. The claimant averaged between 11 and 16 hours per week. The claimant quit when she failed and refused to return to work after being released by her doctor to do so and after exhausting all medical leaves available. On or about July 3, 2003, the claimant took 12 weeks of family medical leave because she was pregnant. This was approved by the employer. The claimant delivered early her child on August 14, 2003 and the child tragically passed away on August 19, 2003. The claimant remained on her family medical leave until it expired in early October 2003. The claimant obtained a release from her doctor to go back to work on October 20, 2003. However, the claimant did not feel that she was ready to go back to work and refused and failed to do so. There was no medical reason or physical reason for the claimant's failure or refusal to go back to work and there was nothing about her work at the employer that prohibited her from working. The claimant simply did not feel that she was ready to go back to work because of the trauma endured from the loss of her child. The claimant contacted the employer on or about October 21, 2003 to inquire about an extension of her medical leave and was informed that she had already exhausted her leave and would not be entitled to any other leave. The claimant spoke at that time with Christine Adams, Human Resources Manager. Ms. Adams informed the claimant that when she was ready to return to work she might be rehired at that time. At no time did the claimant ask the employer for any kind of accommodation.

Sometime at the end of February 2004, the claimant believed that she was ready to return to work and talked to several coworkers who informed her that they did not think the employer was hiring. At that time the claimant did not talk to anyone in a position of authority and, in particular, did not seek out and talk to Ms. Adams. The claimant picked up an application for employment, completed it, and left it with the service desk and has not heard anything about her application but she did not say on her application that she had been on a leave. She still has not talked to anyone in a position of authority at the employer including and, in particular, Ms. Adams.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was at relevant times not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for these reasons but is disqualified to receive unemployment insurance benefits as noted above.

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.

871 IAC 24.25 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.

871 IAC 24.25(20) provides:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

871 IAC 24.25(23) provides:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The parties concede that the claimant left her employment voluntarily and the administrative law judge so concludes from the evidence. The parties disagree slightly as to the day, whether it is October 20 or October 23, but the administrative law judge does not believe that that particular date is crucial to a resolution of this issue. The claimant had been on a medical leave of absence for pregnancy and then for the loss of her child, which leave expired sometime in early October 2003. The claimant was released by her physician to return to work without any restrictions on October 20, 2003 but she did not believe that she was ready to go back to work and therefore did not offer to return to work. Rather, the claimant sought an extension of her leave of absence from the employer when she requested such extension from Christine Adams, Human Resources Manager and the employer's witness. Ms. Adams informed the claimant that she had already exhausted all leave to which she was entitled. The claimant was not ready to return to work and not up to working and informed Ms. Adams of this. Ms. Adams informed the claimant that when she was ready to return to work she might be rehired. The claimant then did not return to work. Both parties agree and the administrative law judge concludes that the claimant left her employment voluntarily when she did not return to work after being released by the doctor and after exhausting all of her medical leave. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden

of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The testimony of the parties except for specific dates was remarkably similar and tragic. The claimant went on a medical leave absence for pregnancy and gave birth to her child on August 14, 2003 but the child tragically passed away on August 19, 2003. The claimant remained on a leave until it was exhausted and she was released by her doctor to return to work. There were no medical reasons why the claimant could not return to work after October 20, 2003 and there was nothing about her work that prevented her from returning, she just did not feel up to working. On the evidence here, the administrative law judge is constrained to conclude that the claimant did not leave her employment upon the advice of a licensed and practicing physician and the employer did not consent to the claimant's absence and therefore the administrative law judge concludes that Iowa Code Section 96.5-1-d is not applicable here. Even if applicable, there is no evidence that the claimant officially returned to the employer and offered to perform services and her regular work or comparable work was not available. The claimant testified that she spoke to coworkers who told her that the employer was not hiring. However, the claimant did not speak to anyone in an official capacity or in a position of authority, and, in particular, did not speak to Ms. Adams. Rather the claimant simply filled out an application and turned it in to the service desk but did not note on the application that she had been on a leave. The administrative law judge is constrained to conclude under the facts here that the claimant officially did not return to the employer and offer to go back to work.

The evidence does establish that the claimant left her employment voluntarily for compelling personal reasons but the period of absence exceeded ten working days and this is not good cause attributable to the employer nor is leaving work due to family responsibility or serious family needs. The administrative law judge is not without sympathy for the claimant but must conclude on the evidence here that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Although the claimant's employment was part-time, the administrative law judge concludes that the claimant is not otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers and therefore 871 IAC 24.27 is not applicable to the claimant.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3

or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that at all material times hereto, after filing for unemployment insurance benefits effective March 7, 2004, the claimant was able, available, and earnestly and actively seeking work. The claimant testified that she returned to the employer and filed a new application for the same or similar employment as she had before, although she did not seek out anyone in an official capacity, to return to work following a leave as noted above. The claimant's applying for such work does indicate, and the claimant so testified, that she is ready to return to work and is able, available, and earnestly and actively seeking work. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits for these reasons. However, as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits because she left her work voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of March 26, 2004, reference 01, is affirmed. The claimant, Angela J. Hillhouse, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

tjc/b