

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER M DAVIS
Claimant

APPEAL NO: 09A-UI-08246-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLARKE COUNTY PUBLIC HOSPITAL
Employer

OC: 03/22/09
Claimant: Appellant (5)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Ability to and Availability for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Christopher M. Davis (claimant) appealed a representative's May 1, 2009 decision (reference 02) that concluded he was not qualified to receive benefits, and the account of Clarke County Public Hospital (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 24, 2009. The claimant participated in the hearing. Kate Emanuel, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

As of March 22, 2009, is the claimant able to and available for work?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2008. The employer hired the claimant to work as a full-time paramedic. Part of the claimant's job duties required him to drive an ambulance and assist personnel in the emergency room. At the time of hire, the claimant informed the employer about a medical condition he had.

On December 29, 2008, the claimant's medical condition resulted in the claimant having multiple seizures. As a result of the seizures, the claimant could not drive. The claimant talked to the employer's chief medical officer about his employment. While the employer indicated the

loss of his driver's license was not a problem, the claimant agreed he needed to have his seizures under control before returning to work. Since the claimant was not eligible for medical leave under the Family Medical Leave Act, the employer granted him emergency medical leave as of December 29 until his anniversary date in February 2009. The claimant was then on a leave of absence under the Family Medical Leave Act until May 2, 2009.

On May 9, the claimant's physician released him to work as long as the claimant did not drive or operate any heavy equipment. On March 29, the claimant paramedic's license was suspended because of his medical condition. As of the date of the hearing, the claimant's physician has not released the claimant to work as a paramedic.

On May 9, 2009, the claimant contacted his supervisor because his physician had released him to work. During the May 9 conversation with his supervisor, his supervisor knew the claimant's paramedic license had been suspended. The supervisor indicated the claimant would have to apply for another job if he wanted to continue his employment. On June 8, 2009, the employer sent the claimant a letter indicating his personal leave of absence with the employer ended on June 27, 2009. If he did not return to work by June 28, the employer would terminate his employment. The claimant did not contact the employer after receiving the June 8 letter because he did not have transportation to Osceola from West Des Moines. If the claimant had contacted the employer and the employer had a job available, it may have been possible for the claimant to have been transferred to another job and continued his employment.

The claimant established a claim for benefits during the week of March 22, 2009. After his doctor released him to work on May 9, the claimant has been looking for work as a restaurant manager, parts manager, and a supervisor at a grocery store. The claimant has experience in the above jobs.

On May 1, 2009, a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of March 22, 2009, because he had voluntarily quit his employment for reasons that did not qualify him to receive benefits. The claimant received the representative's decision on May 4, 2009.

On May 11, 2009, the claimant went to his local Workforce office and faxed his appeal letter to the Appeals Section. When the claimant did not receive any information about a hearing, he contacted his local Workforce office again on June 7. On June 7, the claimant learned the Appeals Section had no record of receiving his appeal. The claimant faxed his appeal for the second time on June 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code section 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 May 11, or the last day in which to file a timely appeal. Even though the Appeals

Section did not acknowledge receiving the claimant's May 11 appeal, a preponderance of the evidence supports the claimant's testimony that he filed his first appeal on May 11. Therefore, the Appeals Section has jurisdiction in this matter.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not able to work when he is under a physician's care and the physician has not released the claimant to work. 871 IAC 24.23(35). The claimant was not able to work March 22 through May 9, 2009, because his doctor had not released him to work until May 9, 2009.

The law also presumes a claimant is not available for work when he has been granted a leave of absence. A leave of absence is deemed a period of voluntary unemployment and a claimant is considered ineligible for benefits during a leave of absence. 871 IAC 24.23(10). Even though the claimant's physician released him to work with some work restrictions on May 9, the claimant had been granted a personal leave of absence until June 27, 2009. After the claimant received the employer's June 8 letter verifying he was on a leave of absence until June 27, the claimant did not contact the employer in response to the letter. Since the claimant's leave of absence did not end until June 28 and the claimant did not ask that his leave of absence end prior to June 27, the claimant cannot be considered able to work until June 28, 2009.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code section 96.6-2.

The claimant effectively quit his employment after May 9 when his physician released him to work and he did not contact the employer's resource director about working. Although the claimant contacted his supervisor, he knew he could not work as a paramedic because his license had been suspended. The claimant's failure to contact the employer's human resource office in May or after he received the June 8 letter supports the fact he had no intention of returning to work or even attempted to find out if the employer had any work that met his work restrictions. The claimant acknowledged he was not interested in continuing his employment because he did not have a driver's license. The law presumes a lack of transportation to work does not qualify a claimant to receive benefits. 871 IAC 24.25(1).

In conclusion, the claimant is not eligible to receive benefits March 22 through May 9 because he was not able to work because his physician had not released him to work. The claimant was not available for work until June 28 because he was on a leave of absence with the employer. In reality, the claimant made the decision he would not return to work because he could not drive and understood he would not be able to work as a paramedic. The claimant effectively quit his employment for reasons that do not qualify him to receive as of May 10, 2009.

DECISION:

The representative's May 1, 2009 decision (reference 02) is modified, but the modification has no legal consequence. The claimant filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal. The claimant is not eligible to receive benefits March 22 through May 9, 2009, because his physician did not release him to work until May 9, 2009. After the claimant's paramedic license and driver's license were suspended, the claimant effectively quit his employment by failing to contact the employer's human resource department to find out if the employer had any other job he could do. The claimant did not pursue other

employment with the employer because he could not drive and did not have transportation from West Des Moines to Osceola. The claimant quit his employment for personal reasons that do not qualify him to receive benefits. As of May 10, 2009, the claimant is not qualified to receive benefits based on the reasons for his employment separation. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs