

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY M MELLOR
Claimant

APPEAL NO. 08A-UI-04885-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

EBENEZER REALTY SERVICES CO
Employer

**OC: 04/06/08 R: 02
Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Shirley Mellor filed an appeal from a representative's decision dated May 16, 2008, reference 01, which denied benefits based on her separation from Ebenezer Realty Services Company. After due notice was issued, a hearing was held in Des Moines, Iowa, on June 16, 2008. Ms. Mellor participated personally and Exhibits A and B were admitted on her behalf. The employer participated by K'Lee Latham, Administrator. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Mellor has been separated from employment and, if so, whether the separation was for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mellor began working for Ebenezer Realty Services Company, doing business as The Shores at Pleasant Hills, on May 19, 2006. She was last employed part time as a dining room assistant. She usually worked ten or more hours per week.

On or about September 8, 2007, Ms. Mellor presented her supervisor with a listing of dates she wanted to have off through March of 2008. Although the request was not on a leave or vacation request form, she was allowed to have the time off. Her request for an extensive period of time off in February and March of 2008 was again approved by a supervisor either in late November or early December of 2007. Ms. Mellor was not advised of any changes that would be made in her job if she took the requested time off. Her last day at work was January 3, 2008.

On April 2, Ms. Mellor contacted her supervisor to advise that she was ready to return to work. She was told that her new status would be that of an "on-call" worker, meaning she would be called when needed to fill in for others or as the need arose. She was given the opportunity to work on April 7 and 8 but was ill. She was later offered work on April 29 and 30 but was given short notice and had prior commitments. Ms. Mellor has not been offered work since that time.

REASONING AND CONCLUSIONS OF LAW:

Ms. Mellor did not quit her job in order to take vacation. She requested and was given permission to have certain timeframes off with the intention of returning to her job. The fact that she did not complete any paperwork to have the time off is of no significance as the employer still considered her an employee in spite of the fact that she did not make a formal request to take leave or vacation time. Ms. Mellor filed a claim for job insurance benefits effective April 6, 2008 because the employer changed the terms and conditions of her employment when she attempted to return to work in April.

Prior to her extended leave, Ms. Mellor worked pursuant to a posted schedule. When she returned in April, she was told she would be an "on-call" worker with no set hours. She is willing to work on-call but needs sufficient notice. Since she has no set hours, there may be weeks when she does not get a minimum of ten hours, the amount she was working before she took leave. She is entitled to partial job insurance benefits during those weeks in which the employer provides her with less work than she had been performing. Ms. Mellor remains available to work to the same extent as she was working before she went on leave.

For the reasons stated herein, the administrative law judge concludes that Ms. Mellor had not been separated from employment with The Shores at Pleasant Hills. She is partially unemployed and is entitled to benefits during weeks in which she is not provided work.

DECISION:

The representative's decision dated May 16, 2008, reference 01, is hereby reversed. Ms. Mellor is still employed by The Shores at Pleasant Hills but is working reduced hours. She is available for work within the meaning of the law. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css