IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SANDRA E THEESFELD Claimant **GRAPETREE MEDICAL STAFFING INC** Employer	**APPEAL 21R-UI-19382-AR-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/31/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Sandra E. Theesfeld, filed an appeal from the August 12, 2020, (reference 02) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Grapetree Medical Staffing, Inc., for personal reasons. The parties were properly notified of the hearing. A telephone hearing was scheduled for June 15, 2021. No hearing was held because appellant failed to respond to the hearing notice and provide a phone number at which she could be reached. On June 28, 2021, a default decision was issued dismissing the appeal.

Claimant timely appealed to the Employment Appeal Board (EAB). On August 31, 2021, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on October 22, 2021. The claimant participated personally. The employer participated through Zachary Myer. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed in an as-needed capacity as a nurse aide from March 6, 2014, until this employment ended on March 10, 2020, when she resigned.

Claimant became ill in October 2019. She was diagnosed with cancer, and began a medical leave of absence from the employer in December 2019. She was undergoing aggressive cancer treatment and was too ill to work. In March 2020, the employer contacted claimant to tell her that she had completed half of the allowed six months of medical leave. Claimant was still undergoing treatment and was going to have to have surgery at some point in the future. She

responded to the employer that she felt it best to resign in order to maintain her good-standing status with the employer. Additionally, by that point, her doctor had restricted her from working entirely because of COVID-19. Claimant intended to return to the employer when she felt able to.

A disqualifying decision was mailed to claimant on August 12, 2020. It warned claimant that an appeal was due by August 22, 2020. Claimant acknowledged that she received the decision, but she could not reasonably estimate when. She explained that her cancer treatment was very aggressive and caused significant cognitive impairment. Additionally, she was simply not focused on demands other than her illness and treatment. She timely appealed the later overpayment decision. Her appeal was submitted on April 5, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871—24.35(1) provides:

> 1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
>
> (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
>
> (b) If transmitted via the State Identification Date Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
>
> (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

> 2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is

> established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); *see also In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Due to claimant's medical condition around the time the decision was mailed to her, and persisting well after that time, she could provide no reliable information about when she received the decision. Accordingly, it is unclear how long it was between the time claimant became aware of the decision and the time at which she filed her appeal. She timely filed an appeal of the overpayment decision, which was the first notice she had of the decision during a period in which her cognitive impairment had begun to subside. Claimant's medical condition and its associated effects on her cognition, combined with no information about when claimant received the disqualifying decision in the mail, are sufficient good-cause reasons for the administrative law judge to accept the appeal as timely.

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.

Iowa Admin. Code r. 871—24.25(35) 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:

> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

> "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871—24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

Claimant decided to resign when her illness and its treatment became too taxing on her health for her to continue working. Her doctor also restricted her from working at one point, though she did not provide evidence of her doctor's recommendation to the employer.

Claimant has not established that the medical condition was work related or that treating medical personnel advised her to quit the job, as is her burden. Additionally, she had been released to return to work and had not returned to the employer to offer her services upon her medical release to do so. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The August 12, 2020, (reference 02) unemployment insurance decision is affirmed. Claimant's appeal is accepted as timely. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Alexis D. Rowe
Administrative Law Judge

November 8, 2021
Decision Dated and Mailed

ar/scn