

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

PHYLLIS M REELFS
23 MODERN WAY
IOWA CITY IA 52240

THE UNIVERSITY OF IOWA
c/o DAVE BERGEON EMPLOYEE
RELATIONS
121 R UNIVERSITY SERVICES BUILDING
IOWA CITY IA 52242

J. RICHARD JOHNSON
ATTORNEY AT LAW
WHITE AND JOHNSON
PO BOX 5878
CEDAR RAPIDS IA 52406

Appeal Number: 05A-UI-03611-S2T
OC: 02/27/05 R: 03
Claimant: Appellant (1)R

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 Quit

STATEMENT OF THE CASE:

Phyllis M. Reelfs (claimant) appealed a representative's March 29, 2005 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with The University of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2005. The claimant was represented by J. Richard Johnson, Attorney at Law, and participated personally. The employer participated by David Bergeon, Human Resources Specialist 2; Debby Zumbach, Director of Purchasing; Karen Housel, Program Associate 2; and Mary Jane Stumpf, Department of Human Resources Administrative Accountant. The claimant offered two exhibits which were marked for identification as Exhibits A and B. Exhibits A and B

were received into evidence. The employer offered two exhibits which were marked for identification as Exhibits One and Two. Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 17, 1985, as a full-time secretary III. The claimant understood she was supposed to report any absences prior to the start of her shift. Her last day of work was September 24, 2004. She began to use sick leave and vacation for her absences.

The claimant applied for Family Medical Leave (FMLA) on or about December 2004, because of mental health issues. On January 19, 2005, the employer requested documentation in order to approve the FMLA. The employer did not receive a response from the claimant. While waiting for FMLA approval the claimant obtained a physician's excuse from work covering the period from January 17 to February 16, 2005. The claimant's physician faxed the excuse to the employer, but the employer did not receive the excuse.

Having not received any documentation, doctor's excuses or daily reporting that the claimant would not be at work from February 10, 2005, forward, the employer sent a letter dated February 11, 2005, to the claimant. The letter advised the claimant her FMLA designation would be withdrawn because the claimant did not provide the requested documentation regarding duration and frequency. The letter requested documentation by February 18, 2005, or authorization would be withdrawn. The letter was delivered to the claimant on February 15, 2005, by certified mail.

On February 15, 2005, the claimant went to her physician and obtained an excuse from February 9, to March 2, 2005. On February 17, 2005, the claimant received an excuse from work from February 17 to March 3, 2005. The claimant's February 17, 2005, physician faxed the February 17, 2005, excuse to the employer but the employer did not receive the excuse.

The employer did not hear from the claimant by February 18, 2005, and terminated her on February 21, 2005, for failure to provide a doctor's excuse, documentation or proper reporting of her absences.

The claimant did not look at the letter of February 11, 2005, until February 23, 2005. She did not contact the employer. On February 25, 2005, the employer received a doctor's excuse issued February 15, 2005, that indicated the claimant could not work from February 9 until March 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

Iowa Code section 96.5-1 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She stopped communicating with the employer and failed to return to work. There was no evidence of good cause attributable to the employer.

From the employer's standpoint the claimant left on FMLA in September 2004, and did not stay in contact with the employer after January 2005. She did not provide documentation of her absences. She did not respond to letters.

From the claimant's standpoint, she had various people fax excuses and the employer should have received them. The claimant provided no confirmation of faxing. She provided no evidence that the requested FMLA documentation was completed. The claimant's physician's letter indicates that someone from the employer's office did receive one of the work excuses but there is no indication to which excuse or which person the physician is referring. The claimant did not follow up on whether any excuses or documentation were received by the employer. While the claimant could attend two doctors' appointments, she could not open the envelope that was in her possession, knowing it was certified correspondence from the employer.

While neither party was adept at communicating with the other party, the employer sent their letter by certified mail and therefore, was assured the claimant had the letter of request for documentation in her possession on February 15, 2005. The claimant has offered no such assurances the employer received her documents. While it is true the claimant suffered from a mental disorder, she was still able to attend doctor appointments, request excuses and request help in getting those excuses faxed. It does not seem unreasonable that she could have made a telephone call or requested help in making a telephone call to the employer to see if the faxes had been received.

The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The issue of whether the claimant is able and available to receive unemployment insurance benefits is remanded for determination.

DECISION:

The representative's March 29, 2005 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant is able and available to receive unemployment insurance benefits is remanded for determination.

bas/sc