

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TARA ALBERTSON**  
Claimant

**APPEAL 21A-UI-10194-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DONALDSON COMPANY INC**  
Employer

**OC: 06/14/20  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Able to and available for work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications  
Iowa Code § 96.5(1) – Voluntary Quitting  
IowaAdm in. Code r. 871-24.26 – Voluntary Quit

**STATEMENT OF THE CASE:**

On April 12, 2021 the claimant filed an appeal from the August 24, 2020 unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 25, 2021. The claimant participated personally. The employer, participated through employee Gary Loden.

**ISSUES:**

Was the claimant's appeal timely?  
Was the claimant totally or partially unemployed?  
Was the claimant able to and available for work?  
Did the claimant voluntarily quit 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 as spot welder starting December 4, 2017. Her immediate supervisor was Blaine Wilder. From mid-April through May 20, 2020 claimant was on accident and sickness leave under a note from a doctor. That note expired on May 20, 2020. On May 21, 22, and 25, 2020 claimant called in for personal leave. On May 26, and 27, 2020 claimant was on accident and sickness leave. On June 2, 2020 claimant called in and was on unpaid leave of absence. On June 3, 4, and 5, 2020 claimant failed to call in or show up for work. The employer has a three day no call no show policy which states that three consecutive days of no call no show absences are considered as a voluntary resignation. Claimant was aware of the policy. On June 1, 2020 claimant's family had her involuntarily committed to rehab, and she was no longer was able to make phone calls. On June 9, 2020 the employer terminated claimant's employment

under its three day no call no show voluntary resignation policy. Claimant was paid \$3,848.00 for the eight weeks ending August 15, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code § 96.6(2) provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, claimant did not file her appeal until over seven months after the due date. Claimant testified credibly that she had been working with an Iowa Workforce Development employee named "Oscar" to unlock her account so that she could file the appeal. The claimant did receive the decision, but was working with IWD staff to unlock her account so that she could file her appeal. The claimant did not have an opportunity to protest the notice of claim because, for some unknown reason, her account was locked. The claimant filed the appeal as soon as possible. Therefore, the appeal shall be accepted as timely.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Iowa Admin. Code r. 871-24.23 provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.
- (10) The claimant requested and was granted a leave of absence, such period is deemed

to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Claimant was not able to and available for work as she was out on accident and illness leave of absence, such leave being considered a voluntary unemployment making her ineligible for benefits. Claimant testified that she was out as of June 1<sup>st</sup>, as she had been involuntarily committed to rehab, and was unable to call. She was in that case unable to work because she was under the care of a medical practitioner and had not been released to work.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25 provides:

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:

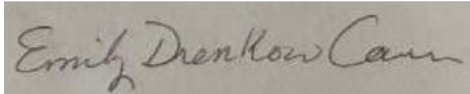
- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer had a rule, which claimant was aware of that being absent for three consecutive days without giving notice to the employer would be considered a voluntary resignation. Claimant was absent for three days without notice, for an important personal reason for sure, but still a three day no call no show.

Claimant was not able to or available for work after June 1, 2020 and voluntarily quit under the employer's three day no call no show policy. Benefits are denied.

**DECISION:**

The claimant's appeal was timely. The August 24, 2020 unemployment insurance decision denying benefits is affirmed. Benefits are denied.



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Emily Drenkow Carr  
Administrative Law Judge  
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July 12, 2021  
Decision Dated and Mailed

ed/scn