IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DONALD A CARMON Claimant **PEOPLEREADY INC** Employer	**APPEAL 19A-UI-09778-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/14/19** **Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On December 10, 2019, Donald A. Carmon (claimant) filed an appeal from the November 22, 2019, reference 04, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with PeopleReady, Inc. (employer) for personal reasons which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2020 and consolidated with the hearing for appeal 19A-UI-09779-SC-T. The claimant participated personally. The employer participated through Phillip Schuller, Branch Manager. The Claimant's Exhibits A through E and the Department's Exhibits D1 through D3 were admitted into the record.

ISSUES:

Is the claimant's appeal timely?
Was the claimant's separation from employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had worked for the employer since June 13, 2018. He has always worked physical jobs either in the food industry or in a forklift operator/warehouse capacity. He was most recently employed in a temporary position working full-time as a General Laborer for the employer's client Millennium Waste beginning on October 21, 2019 and his last day worked was Friday, October 25, 2019. Over the weekend, the employer spoke to the claimant who confirmed he would be returning to his assignment the following week.

On Monday, October 28, the claimant did not report for work. On October 29, the claimant notified the employer he had been in the hospital and would not be able to return to work due to knee pain which was the result of a non-work related illness or injury. On November 8, the claimant's doctor restricted him to no repetitive kneeling, squatting, bending, or stooping. He removed the claimant from work, if light duty or desk work was not available. The claimant's knee surgery is scheduled for January 14, 2020. The claimant's doctor has not yet released him to return to work without restrictions.

The unemployment insurance decision that denied benefits was mailed to the claimant's address of record on November 22, 2019. He did not receive the decision. The first notice of disqualification was communication with Iowa Workforce Development (IWD) on December 2. The claimant was advised at that time to file an appeal, but was not told the deadline to file was the same day. The appeal was submitted within ten days of the first notice the claimant received of the disqualification.

REASONING AND CONCLUSIONS OF LAW:

I. Is the claimant's appeal timely?

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

Iowa Code section 96.6(2) provides, in pertinent part:

> Filing – determination – appeal.
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> The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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(2) provides:

> Date of submission and extension of time for payments and notices.
>
> (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.
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> a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
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> b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
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> c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
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> d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed his appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

II. Was the claimant's separation from employment with good cause attributable to the employer?

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

Iowa Code section 96.5(1)d provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 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:
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> …
>
> 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 provides, in relevant part:

> 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:
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> …
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> (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.
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> ….
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> (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 statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). In *Gilmore v. Empl. Appeal Bd.*, Gilmore, the employee, was not fully recovered from his non-work related injury and was unable to show that he fell within the exception of section 96.5(1)(d). 695 N.W.2d 44 (Iowa Ct. App. 2004). The court determined he voluntarily quit without good cause attributable to the employer and was not entitled to unemployment benefits because his injury was not connected to his employment and he had not fully recovered. *Id,* see also *White*, 487 N.W.2d at 345; *Shontz*, 248 N.W.2d at 91.

The record in this case reflects that the claimant's medical condition is not work-related and he has not fully recovered. For unemployment insurance benefits purposes, the employer is not obligated to accommodate a non-work related medical condition. Even though the claimant's separation was for good personal reasons, it was without good cause attributable to the employer. Benefits must be denied.

DECISION:

The claimant's appeal is timely. The November 22, 2019, reference 04, unemployment insurance decision is affirmed. The claimant is separated from employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible or until such time as he obtains a full release to return to regular duties without restriction, offers services to the employer, and it has no comparable, suitable work available.

Stephanie R. Callahan
Administrative Law Judge

January 9, 2020
Decision Dated and Mailed

src/scn