

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

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R & B RECEIVABLES MANAGEMENT INC
860 NORTHPOINT BLVD
WAUKEGAN IL 60085

Appeal Number: 06A-UI-07761-SWT
OC: 07/02/06 R: 04
Claimant: Appellant (1)

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
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 31, 2006, reference 01, that concluded she voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on August 17, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynn Schiffke participated in the hearing on behalf of the employer. Exhibits A, B and C were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a patient advocate from November 29, 2004, to June 2, 2005. She was off work due to a non-work-related heart condition from April 11 to May 29, 2006. The claimant requested and was granted leave under the Family and Medical Leave Act (FMLA) during the seven weeks.

The claimant attempted to return to work on May 30, 2006. She worked until June 2, 2006, when she left work due to chest pain. She requested additional FMLA leave and began calling in each day starting June 5. The employer had provided the claimant an application for long-term disability under the employer's disability insurance plan. On June 27, 2006, she saw her doctor. She had the doctor complete a FMLA medical statement in which the doctor certified the claimant was unable to work from June 5 until indefinitely. The doctor also completed the application for long-term disability for the claimant. On June 29, 2006, the claimant submitted the FMLA leave request form and application for long-term disability to the employer.

On June 30, 2006, the employer sent the claimant a letter stating that the request for FMLA leave was granted effective June 5. It informed the claimant that she had five weeks of unpaid FMLA leave available and the last day of the leave would be July 7. The letter stated the claimant's application for long-term disability had been forwarded to the insurance company and that she would be eligible for continuation of her health insurance if she paid the monthly premiums. The letter did not state the claimant was terminated or dismissed at the end of her unpaid leave, but the claimant considered it a termination.

The claimant left messages for her supervisor over the weekend of July 1. In one message, she informed her supervisor that she had received the letter and was applying for Social Security disability. The supervisor understood that the claimant was not returning to work.

The claimant did not return to work after July 7, 2006, or contact her supervisor to find out if she would be allowed additional time off until she was released to return to work. She had a doctor appointment scheduled for July 11 but did not ask for any additional time off because she believed she had been terminated. At some point during the week of July 3, the claimant spoke to the controller about part-time work, which her doctor said she could try, but the controller said she did not think there were any part-time jobs. The claimant's supervisor would probably have been willing to work with the claimant if she had been contacted and the situation was discussed.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 2, 2006. As of July 2, 2006, the claimant had only been released for part-time work. The doctor's appointment scheduled for July 11 was postponed by the doctor until July 17, 2006, when the claimant was released for full-time work. The claimant never filed for Social Security disability and withdrew her claim for long-term disability on July 19, 2006.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. The claimant's belief that the letter of June 30, 2006, was a letter of termination was unreasonable under the circumstances. The letter spells out the end of her FMLA leave but says nothing about dismissal or the consequence of her not returning to work after July 7, 2006.

Furthermore, the unemployment insurance rules provide that when person who is on a leave of absence does not return to work at the end of the leave, it is considered a voluntarily quit of employment. 871 IAC 24.22(2)j. The separation must be treated as a quit by the claimant.

While the agency evaluated this case as a work-related medical condition under 871 IAC 24.26(6)b, the evidence does not support this. The unemployment insurance law also provides that individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code section 96.5-1-d.

In my view, this statute applies and the claimant has satisfied (1) and (2), but the claimant has not satisfied condition (3) because she has not offered to return to work after being released by her doctor. Therefore, she is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, or satisfies the conditions of Section 96.5-1-d to receive benefits.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that as of the time she applied for benefits, the claimant had only been released to work part time. She was released to work full time on July 17, 2006. She, therefore, would be ineligible because she was unable to work full time between July 2 and July 17, 2006, but afterward that basis for disqualification would end.

DECISION:

The unemployment insurance decision dated July 31, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, or requalifies under the conditions of Section 96.5-1-d. She would also be ineligible during the period from July 2 through 17, 2006.

saw/pjs