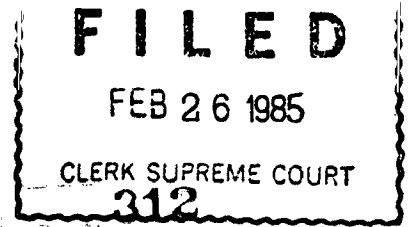


IN THE COURT OF APPEALS OF IOWA



TONI POUNDS,)

Petitioner-Appellant,)

vs.)

IOWA DEPARTMENT OF JOB SERVICE,)
and ORCHARD PLACE,)

Respondents-Appellees.)

Filed February 26, 1985

4-538
84-552

Appeal from the Iowa District Court for Polk County - George B. Bergeson,
Judge.

Petitioner Toni Pounds appeals from the trial court's decision affirming a
decision of Respondent Iowa Department of Job Service disqualifying her from
receipt of unemployment benefits. AFFIRMED.

Helen L. Sterling, Des Moines, for petitioner-appellant.

Joseph L. Bervid, Walter F. Maley and Blair H. Dewey, Des Moines, for
respondent-appellee, Iowa Department of Job Service.

Craig V. Schrader, of Austin & Gaudineer, Des Moines, for respondent-
appellee Orchard Place.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

Claimant Toni Pounds appeals from the trial court's decision affirming a decision of Respondent Iowa Department of Job Service disqualifying her from receipt of unemployment benefits.

Claimant Toni Pounds was employed by Respondent Orchard Place as a night supervisor from March, 1980 until February 12, 1982. Pounds has high blood pressure problems and had them during the course of her employment. Pounds contends she would have fewer blood pressure problems with a day job. Pounds applied for a day position with Orchard Place in January of 1982. She did not receive the position.

Pounds terminated her employment on February 12, 1982. Two weeks¹ before she quit she gave the following notice: "I will be resigning my position as night supervisor because it is . . . is no longer physically possible for me to work my present hours."

On February 14, 1982, Pounds filed an application for benefits.

On February 15, 1982, Pounds saw a doctor at Broadlawns Hospital who gave her the following report. Patient seen on February 15, 1982 and released to return to work/school on February 15, 1982. Patient has kidney disease and poorly controlled high blood pressure and needs a day job for medical management of these conditions.

Pounds was asked at hearing:

Q. . . . When you get (sic) the release from your doctor, did you approach to the employer and offer your service to him continue working (sic)? A. I tried to keep track of what jobs were available as far as I knew, there were no other jobs available. . .

Pounds asks us to find as a matter of law that her employment as night supervisor aggravated her medical problems and made it necessary for her to

¹

The notice was either given on January 29, 1982 or February 2, 1982.

terminate her employment. Pounds' contention is based on the premise that the record supports a finding that she quit because she had a disability that was caused by or aggravated by factors and circumstances associated with her employment.

A claimant who quits voluntarily because of disability is disqualified from benefits under 96.5(1) unless he or she proves the disability was either caused or aggravated by factors and circumstances associated with the employment. Schontz v. Iowa Employment Sec. Commission, 248 N.W.2d 88, 91 (Iowa 1976).

The employer responds that this issue is not properly before the court because Pounds failed to exhaust her administrative remedies on this issue and it was not raised in the district court. Pounds' notice of appeal/application for rehearing addresses only the issue of the hearing officer's findings that Pounds did not immediately notify her employer that she was leaving due to illness.

We agree that the issue was not properly preserved for review. See Salisbury Laboratories v. Iowa Department of Environmental Quality, 276 N.W.2d 830, 835-38 (Iowa 1979).

Pounds next contends the agency decision was not based on substantial evidence and should be reversed. The hearing officer determined that Pounds did not immediately notify her employer that she was leaving due to illness upon the advice of her physician and failed to fulfill the requirements of section 96.5(1)(d) of the Iowa Code. The hearing officer further determined that it is the duty of the claimant to establish her entitlement to unemployment insurance under Chapter 96 of the Iowa Code and that the claimant has failed to meet the duties in this instance (sic). The decision was affirmed by the appeal board and by the district court.

An individual is generally disqualified from unemployment benefits if he/she leaves work voluntarily without good cause attributable to his/her employers.

Iowa Code §96.5(1). Pounds does not dispute the fact that she left her employment voluntarily but claims to meet the exception to the rule found at Iowa Code §96.5(1)(d) which provides:

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.

In discussing 96.5(1)(d) we have said: The statute requires immediate notice as soon as the employee has knowledge of the necessity for being absent. Quenot v. Iowa Dept. of Job Service, 339 N.W.2d 624, 627 (Ia. App. 1983). There is substantial evidence in the record that Pounds failed to comply with the statutory requirements of 96.5(1)(d). We affirm the trial court.

AFFIRMED.