

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

ANTONIO LOPEZ
4316 HICKMAN RD
DES MOINES IA 50311

GM CONSTRUCTION INC
C/o MATT HEUTON
7500 NW 100TH ST
GRIMES IA 50111

Appeal Number: 06A-UI-00285-A
OC: 12/11/05 R: 02
Claimant: Appellant (4)

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 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Antonio Lopez filed a timely appeal from an unemployment insurance decision dated January 6, 2006, reference 01, which disqualified him for benefits upon a finding that he had voluntarily left employment with GM Construction, Inc., without good cause attributable to the employer. After due notice was issued, a hearing was held in Des Moines, Iowa, on February 7, 2006 with Mr. Lopez participating. Exhibits A and B were admitted on his behalf. The employer, GM Construction, Inc., did not respond to the hearing notice. Ike Rocha interpreted.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Antonio Lopez worked as a carpenter for GM Construction, Inc., from September 2005 until he fractured his left leg at work on or about December 21, 2005. He has not been released to return to work. The employer has no work for him, at least until he is released by his doctor.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Mr. Lopez is entitled to receive unemployment insurance benefits at this time. It does not.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, 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".

The claimant's testimony and his documentary evidence establish to the satisfaction of the administrative law judge that Mr. Lopez has not been released by his physician to return to work of any kind. Because of this, he does not meet the eligibility requirement of being medically able to work. Benefits must be withheld until Mr. Lopez establishes that he has been released for some type of work.

The evidence presented to the administrative law judge persuades him that the separation was neither a quit nor a discharge. Mr. Lopez is on medical layoff until he can return to work.

DECISION:

The unemployment insurance decision dated January 6, 2006, reference 01, is modified. The claimant ineligible to receive unemployment insurance benefits from the date of his unemployment insurance claim until he provides sufficient evidence to the Agency that he has been released to return to work. If the employer has no work for Mr. Lopez at that time, he will become eligible for unemployment insurance benefits.

kjw/kjw