

**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**

**JAMES H MCCOLLUM
128 DELMAR DR
BOLINGBROOK IL 60440**

**QUEBECOR WORLD DUBUQUE INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-05786-RT
OC: 05-02-04 R: 12
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 Quitting
Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, James H. McCollum, filed a timely appeal from an unemployment insurance decision dated May 18, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on June 15, 2004 with the claimant participating. Julie Hartlep, Human Resources Coordinator, participated in the hearing for the employer, Quebecor World Dubuque, Inc. The employer was represented Lucie Hengen of

Employers Unity, Inc. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time bindery category I from July 3, 2002 until he voluntarily quit on April 27, 2004. The claimant quit to relocate to Illinois to be near family and friends because of his diabetes condition. The claimant orally informed the employer's witness, Julie Hartlep, Human Resources Coordinator, that he had to leave his employment in Dubuque, Iowa, to be near friends and family to help take care of his diabetes condition. Shortly before his quit, the claimant learned that he suffered from diabetes. His physician felt that the claimant would be better able to control his diabetes by being closer to his family as shown at Employer's Exhibit 1. The claimant's diabetes condition was unrelated to his employment. His physician did not tell the claimant that he had to quit his job. Nevertheless, the claimant left his employment to move to Illinois to be near family and friends. The claimant left his employment for his own safety and well being and his quit was not attributable to the employer. The claimant never expressed any concerns to the employer about his working conditions nor did he ever indicate or announce an intention to quit prior to his quit. Work would have remained for the claimant in Dubuque, Iowa, if he had not quit. The claimant did inquire about a transfer from the employer's plant in Dubuque, Iowa, to an employer's plant near his residence in Illinois. However, the employer has no transfer policy and requires that anyone who leaves one plant must reapply at another plant. Each plant of the employer has something different and not all the plants do the same kind of work. The employer helped the claimant as much as it could in getting another job with a different employer's plant. However, the plant of the employer nearest the claimant was not doing any hiring.

The claimant has placed no restrictions on his ability to work. The claimant has placed restrictions on his availability for work for day or evening hours. The claimant is actively and earnestly and actively seeking work by making two in-person job contacts each week. The claimant has never returned to the employer and offered to go back to work.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for that reason.

Ref 1, 107, 163 (Omit 1), 164, 174

The parties concede that the claimant voluntarily left his employment. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant credibly testified that he left his employment with the employer herein because it was in Dubuque, Iowa, and he had no friends or relatives nearby. The claimant credibly testified further that he quit because he learned that he had a diabetes condition and he needed a support system of family and friends which was only available in Illinois. The claimant conceded that his diabetes condition was unrelated to his employment and that his quit was not attributable to the employer. The claimant quit to move to a location so that he could be closer to his friends and family to help care for him and his diabetes condition. There is no evidence that the claimant's condition was in any way related to his employment. There is also no evidence that the claimant has recovered nor is there any evidence that the claimant has returned to the employer and offered to go back to work. The claimant never expressed any concerns to the employer about his working conditions nor did he ever indicate or announce an intention to quit prior to his quit. Work remained available for the claimant had he not quit.

The administrative law judge is constrained to conclude under the evidence here that the claimant left his employment voluntarily without good cause attributable to the employer. There

is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Rather, the evidence indicates that the claimant quit to move to a different locality and for compelling personal reasons making the period of absence exceed ten working days and these reasons are not good cause attributable to the employer. The claimant did have a diabetes condition but there is no evidence that the claimant left his employment upon the advice of a licensed and practicing physician nor evidence that he has recovered nor evidence that he returned to the employer and offered to go back to work. The administrative law judge is not without sympathy for the claimant and understands the reason for his location but is constrained to conclude that the claimant left his employment voluntarily without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

The claimant testified that he was unable to transfer from the employer's location in Dubuque, Iowa, to a location near where he was residing in Illinois. The administrative law judge does not believe that there is any requirement that the employer transfer the claimant. Further, the employer's witness, Julie Hartlep, Human Resources Coordinator, credibly testified that the employer has no transfer policy because each plant for the employer does something different and not all the plants do the same kind of work. Ms. Hartlep credibly testified that she assisted the claimant as much as possible but that the claimant had to reapply in Illinois. The claimant did so but the employer was not hiring.

Ref 11

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he is and was at all material times hereto able, available, and earnestly and actively seeking work. The claimant credibly testified that he has placed no restrictions on his ability to work and, concerning his availability for work, the restrictions placed by the claimant were for day or evening hours. The administrative law judge does not believe that this restriction unreasonably impedes his

opportunity to obtain employment. The claimant also credibly testified that he is earnestly and actively seeking work by making two in- person job contacts per week. The employer offered no evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits for that reason. However, as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits because he left his employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of May 18, 2004, reference 01, is affirmed. The claimant, James H. McCollum, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work but is still disqualified to receive unemployment insurance benefits.

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