

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

MICHAEL W KEYS
730 – 26TH ST SE
CEDAR RAPIDS IA 52403

IOWA SPECIALITIES INC
824 – 27TH AVE SW
CEDAR RAPIDS IA 52404-3427

Appeal Number: 05A-UI-07603-DWT
OC: 06/26/05 R: 03
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

STATEMENT OF THE CASE:

Michael W. Keys (claimant) appealed a representative's July 14, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits and the account of Iowa Specialties, Inc. (employer) would not be charged, because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2005. The claimant participated in the hearing. Kevin Dixon, the shop foreman, Rick Happel, the shop manager, and Walter Dixon, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in April 2004. The claimant worked as a full-time painter. Happel was the claimant's supervisor.

After working for a while, the employer understood the claimant had arthritis and hip problems. As a result of these medical conditions, there were days the claimant experienced pain. On January 27, 2005, the claimant left work at noon. Earlier that morning, the claimant felt a "pop" in his shoulder. A short time later when his shoulder started hurting, the claimant did not connect the "popping" sound with the pain in his shoulder. The claimant decided to go home because he could not work with the pain he was experiencing and wanted to see his doctor. Before the claimant went home he tried to talk to Walter Dixon. Dixon was in a meeting with another individual and was not immediately available to talk to the claimant. The claimant did not wait for Dixon and told Happel he was leaving work early because his shoulder hurt. The employer did not think much about the claimant leaving early, because the employer knew the claimant sometimes had problems with his arthritis and hip.

The claimant saw a specialist on January 28, 2005. The specialist told the claimant he could work with some work restrictions, such as no lifting more than 20 pounds. The specialist prescribed physical therapy for the claimant. At this time the claimant assumed his medical problems were the result of his arthritis. The claimant did not notify the employer about his work restrictions. The claimant did not go back to work.

On February 2, 2005, the claimant called and talked to Kevin Dixon about getting his paycheck. The claimant told Kevin Dixon that he had injured his shoulder and he would probably not be returning to work. As of February 2, 2005, the claimant did not believe his shoulder problem was the result of anything that happened at work.

Within a week, the claimant saw a shoulder specialist who diagnosed the claimant's shoulder problem as a torn rotator cuff and the claimant would need surgery. The claimant did not contact the employer about this diagnosis. Instead, the claimant saw his attorney, who informed the employer in a February 17, 2005 letter that the claimant had received a work-related injury. The employer's workers' compensation insurance carrier has provided coverage to the claimant for this medical issue.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The facts indicate the claimant quit his employment on February 2, 2005. The claimant not only told the employer on February 2 that he was probably not coming back to work, but he also failed to let the employer know about the work restrictions he had as of February 2 to see if the employer would accommodate his work restrictions. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant quits with good cause when he quits because the employment has caused or aggravated an injury and continued employment would result in serious danger to the claimant's health or if the claimant is compelled to leave because of a work-related injury. To be eligible under this regulation, a claimant must present competent evidence that for health reasons the claimant had to quit and the claimant gave the employer an opportunity to make accommodations so the claimant could continue working instead of quitting. 871 IAC 24.26(6)(b).

The facts establish that when the claimant talked to the employer on February 2, he did not plan to return to work because he believed his arthritis caused the pain in his shoulder. The claimant's failure to let the employer know about his work restrictions is another indication the claimant decided he could no longer perform the work the employer needed done with his medical issues. After the claimant quit, he discovered the seriousness of his shoulder problem and asked the employer to cover this injury under workers' compensation. At the time the claimant quit, no doctor had advised him to quit.

While, the claimant sincerely believed he needed to quit because of a non-work related injury, for unemployment insurance purposes the claimant quit for reasons that do not qualify him to receive unemployment insurance benefits. As of June 26, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 14, 2005 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for compelling personal reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 26, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjw