

**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**

**MARK E CHARTRAND
726 – 8TH ST SE 208
ALTOONA IA 50009**

**CHURCHES UNITED INC
205 – 15TH ST
DES MOINES IA 50309**

**Appeal Number: 04A-UI-12712-RT
OC: 10-31-04 R: 02
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, Mark E. Chartrand, filed a timely appeal from an unemployment insurance decision dated November 22, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 21, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Jean Brown, Executive Director, participated in the hearing for the employer, Churches United, Inc. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a part-time shelter assistant from September 18, 2003 until he voluntarily quit on April 13, 2004. The claimant averaged between 20 and 24 hours per week. On April 13, 2004, the claimant called and spoke to the employer's witness, Jean Brown, Executive Director. The claimant informed Ms. Brown that he was going to have to have heart surgery and was quitting. The claimant never returned to work. The claimant's heart condition was unrelated to his employment. A few weeks later, the claimant's wife came in to obtain refunds on certain T-shirts the claimant had, but she said nothing about his employment. The claimant has never returned to the employer and offered to go back to work. The claimant never expressed any concerns to Ms. Brown about his working conditions, nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed by the employer. Ms. Brown had no knowledge as to whether the claimant has placed any restrictions on his ability or availability for work and had no knowledge as to whether the claimant was earnestly and actively seeking work. Records indicate that the claimant had earnings from only one other employer in his base period, Manpower, in the amount of \$252.00 in the third quarter of 2003.

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 at relevant times not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits for that reason.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(6)b, (6)a provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and

constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The employer's witness, Jean Brown, Executive Director, credibly testified, and the administrative law judge concludes, that the claimant left his employment voluntarily on April 13, 2004 when the claimant called Ms. Brown and told her that he was quitting. 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 voluntarily without 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 did not participate in the hearing and provide reasons attributable to the employer for his quit. The evidence indicates that the claimant had a heart condition requiring surgery and quit because of that. There is no evidence that the claimant was compelled to leave employment or that his condition was attributable to his employment. There is also no evidence that the claimant informed the employer of a work-related health problem and further informed the employer that he intended to quit unless the problem was corrected or accommodated. There is also no evidence that the claimant has recovered from whatever illness he had, and this recovery was certified by a licensed and practicing physician, and the claimant returned to the employer and offered to go back to work and no suitable comparable work was available. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant left his employment with good cause attributable to the employer as a result of either an employment-related illness or a non-employment-related illness. There is also 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. Accordingly, the administrative law judge concludes 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 employment here was part time and the claimant did voluntarily leave that employment. However, the administrative law judge concludes that excluding the wages earned from the employer herein, the claimant is not otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers and, therefore, would

not be entitled to any unemployment insurance benefits because the voluntary quit here was from part-time employment. See 871 IAC 24.27.

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 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 v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). 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 is and was, at relevant times, able, available, and earnestly and actively seeking work. There is also no evidence that the claimant was either partially unemployed or temporarily unemployed pursuant to Iowa Supreme Court 96.19(38)(b)(c) so as to excuse him from the requirements that he be able, available, and earnestly and actively seeking work. Accordingly, the administrative law judge concludes that the claimant is not able, available, and earnestly and actively seeking work and is not excused from those provisions and, as a consequence, he is ineligible to receive unemployment insurance benefits.

DECISION:

The representative's decision dated November 22, 2004, reference 01, is affirmed. The claimant, Mark E. Chartrand, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits and demonstrates further that he is able, available, and earnestly and actively seeking work, because the claimant left his employment voluntarily without good cause attributable to the employer and there is no evidence that the claimant is able, available, and earnestly and actively seeking work.

b/b