

**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**

**JOSE B AVILES AMAYA
804 PIERCE ST APT 2
SIOUX CITY IA 51101**

**PATRICK CUDAHY INCORPORATED
GOLDEN CRISP PREMIUM FOODS
ONE SWEET APPLE-WOOD LN
PO BOX 8905
CUDAHY WI 53110-8905**

**Appeal Number: 05A-UI-12284-RT
OC: 11-06-05 R: 01
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, Jose B. Aviles Amaya, filed a timely appeal from an unemployment insurance decision dated December 1, 2005, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 21, 2005, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge called that number he reached a female person who could not speak English. With what little Spanish the administrative law judge understood and could use, the individual who answered stated that the claimant was not there and when asked where he was, stated that the claimant was at work. The number called by the administrative law judge was the number provided by the claimant for

the hearing and also the number contained in Iowa Workforce Development records for the claimant. Phil Reinders, Human Resources Manager, participated in the hearing for the employer, Patrick Cudahy Incorporated, doing business as Golden Crisp Premium Foods. 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 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 full time production worker from October 4, 2004 until he voluntarily quit effective September 24, 2005. The last day the claimant worked was September 23, 2005. On September 24, 2005, the claimant was absent and did not notify the employer. Later that day the claimant called and spoke to his supervisor and informed his supervisor that he no longer had transportation and would not be returning to work. The employer has had no further contact with the claimant and the claimant has not returned to the employer and offered to go back to work. At no time did the employer ever promise or offer to provide transportation for the claimant to the work location. At fact-finding the claimant stated that he had no choice but to quit because he wrecked his car and had no transportation to work and he lives about an hour's drive from his workplace. The employer's witness, Phil Reinders, Human Resources Manager, had no knowledge as to whether the claimant had placed any physical or training restrictions on his ability to work or on the times and days for his availability for work other than the claimant had no transportation. He had no knowledge as to whether the claimant was earnestly and actively seeking 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, at relevant times, he was not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits for these reasons.

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 24.25(1) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

The employer's witness, Phil Reinders, Human Resources Manager, credibly testified, and the administrative law judge concludes, that the claimant voluntarily left his employment on September 24, 2005. The claimant even conceded as much at fact-finding. 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 did not participate in the hearing and provide reasons attributable to the employer for his quit. Mr. Reinders credibly testified that the claimant called his supervisor on September 24, 2005 and informed his supervisor that he did not have transportation and would not be returning to work. At fact-finding the claimant stated that he had no choice but to quit because he wrecked his car and had no transportation to work and he lived about an hour's drive from his employment. Mr. Reinders credibly testified that the employer never promised or offered the claimant transportation to his work location. Leaving work voluntarily because of a lack of transportation to the work site unless the employer has agreed to provide transportation is not 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. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective September 24, 2005, 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.

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 demonstrate by a preponderance of the evidence 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 and has further failed to demonstrate by a preponderance of the evidence that he is excused from those requirements. There is no evidence that the claimant is either temporarily unemployed or partially unemployed as defined by Iowa Code section 96.19 (38) (b) and (c) so as to excuse the claimant from the requirements that he be available and earnestly and actively seeking work. The claimant did not participate in the hearing and provide evidence that he is able, available, and earnestly and actively seeking work. Mr. Reinders credibly testified that the claimant quit because he lost his transportation. It appears that, at the very least, the claimant had at some point a restriction on his availability because of transportation. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant is able, available, and earnestly and actively seeking work or is excused from those provisions. Therefore, the administrative law judge concludes that the claimant is not able, available, and earnestly and actively seeking work and, as a consequence, he is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits and further demonstrates that he is able, available, and earnestly and actively seeking work.

DECISION:

The representative's decision of December 1, 2005, reference 02, is affirmed. The claimant, Jose B. Aviles Amaya, 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 also ineligible to receive unemployment insurance benefits because he is not able, available, and earnestly and actively seeking work.

kkf/kjw