

**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 F SWEELY
609 – 20TH AVE
FULTON IL 61252-1554**

**EMPLOYER'S SERVICE BUREAU INC
PO BOX 294
CLINTON IA 52733-0294**

**Appeal Number: 06A-UI-02650-CT
OC: 01/15/06 R: 04
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 Sweely filed an appeal from a representative's decision dated February 3, 2006, reference 01, which denied benefits based on his separation from Employer's Service Bureau, Inc. (ESB). After due notice was issued, a hearing was held by telephone on March 27, 2006. Mr. Sweely participated personally. The employer participated by John Rausenberger, Vice President, and Leslie Botkin, Secretary.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Sweely began working for ESB on July 9, 2001.

He worked full time as a laborer at the Nestle-Purina plant in Clinton, Iowa. He last performed services on December 22, 2005. On January 19, 2006, he gave notice that he was quitting for health reasons.

Mr. Sweely suffered a fractured back prior to his employment with ESB. The employer accommodated his condition. In January of 2006, he was diagnosed with lung cancer and has had one lung removed. He has not been able to work since his surgery in January. His doctor did not advise that he leave the employment. Continued work would have been available if Mr. Sweely had not quit.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sweely was separated from employment for any disqualifying reason. He quit the employment for health reasons after he underwent surgery for lung cancer. He was not advised by a doctor to quit. There was no evidence that his condition was caused or aggravated by the employment. For the above reasons, the administrative law judge concludes that the separation was not for any cause attributable to the employer or the employment within the meaning of Iowa Code section 96.5(1). Mr. Sweely did not leave the employment because of his back condition. He had been able to work in spite of the back problem because the employer accommodated whatever limitations he had as a result of his back.

The administrative law judge has also considered the applicability of Iowa Code section 96.5(1)d. This section denies benefits unless an individual has recovered from his illness or injury and re-offered his services to the employer. There was no evidence that Mr. Sweely would not have been able to return to his job after a period of recuperation. Since he has not been certified as recovered and has not re-offered his services to the employer, he is not entitled to benefits pursuant to section 96.5(1)d.

For the reasons stated herein, the administrative law judge concludes that Mr. Sweely is not entitled to job insurance benefits based on his January 19, 2006 separation from ESB. Moreover, Mr. Sweely is not able to work and has been unable to do so since filing his claim. Therefore, he would not satisfy the provisions of Iowa Codes section 96.4(3), which require that an individual be physically able to work in order to receive job insurance benefits.

DECISION:

The representative's decision dated February 3, 2006, reference 01, is hereby affirmed. Mr. Sweely was separated from employment for no good cause attributable to the employer. Benefits are withheld until such time as he either recovers from his illness and re-offers his services to the employer or has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/tjc