

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRIAN W LENZ
Claimant

APPEAL NO. 09A-UI-17437-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAUGHN FOOD LTD
MIKE'S IGA
Employer

Original Claim: 10/04/09
Claimant: Appellant (5)

Section 96.5-1-d – Voluntary Quit/Non-Work-Related Illness
Section 96.4-3 – Able and Available
Section 96.19-38 – Still Employed

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 10, 2009, reference 01, that held he voluntarily quit employment without good cause due to a non-job-related illness on October 15, 2009, and that denied benefits. A telephone hearing was held on December 29, 2009. The claimant participated. Tim Coyle, Store Manager, participated for the employer.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

A further issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time store clerk beginning November 15, 1996. The claimant averaged anywhere from 20 to 25 hours each week. The claimant was hospitalized due to diabetes and off work from about August 23 to September 7, 2009. Due to his recovery, the claimant was limited to working deliveries two days a week until he fully recovered, and returned to his regular work schedule prior to filing his unemployment claim. The claimant is still employed working his regular job of 20 to 25 hours a week as of the date of this hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes that the claimant voluntarily left his employment due to a non-job-related illness on August 23, 2009, but upon recovery he returned to his regular job and continues to work for his employer as of the date of this hearing. Since the separation from employment and return to work occurred prior to the claimant filing his unemployment claim, there is no job-disqualifying issue in this matter.

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".

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

- a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

- b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

- c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The administrative law judge further concludes the claimant is not eligible for benefits in this matter, as he is still employed at the same hours and work and is not partially unemployed.

The claimant is seeking benefits from another employer, which is the reason for him filing an unemployment claim.

DECISION:

The department decision dated November 10, 2009, reference 01, is modified without effect. The claimant is not eligible for benefits effective October 4, 2009, as he is still working the same job and hours for his employer, and is not partially unemployed.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw