

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

LONNY R BANES  
309 S WALNUT  
NORTH ENGLISH IA 52316

APEX CONSTRUCTION COMPANY INC  
PO BOX 2297  
IOWA CITY IA 52244

Appeal Number: 06A-UI-08000-HT  
OC: 11/27/05 R: 03  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1)d – Quit/Medical

STATEMENT OF THE CASE:

The employer, Apex Construction Company, Inc. (Apex), filed an appeal from a decision dated August 7, 2006, reference 02. The decision allowed benefits to the claimant, Lonny Banes. After due notice was issued, a hearing was held by telephone conference call on August 24, 2006. The claimant participated on her own behalf. The employer participated by Field Coordinator Jason Armstrong.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lonny Banes began employment with Apex on March 10, 2006. He was a full-time laborer.

On April 10, 2006, the claimant requested a medical leave of absence from Field Coordinator Jason Armstrong. This was a non-work-related problem with his knees, which would require surgery.

The claimant contacted Mr. Armstrong on or about June 27, 2006, and said he had been released to return to work but was supposed to "be careful with his knees." Mr. Armstrong said he would get back to Mr. Banes after checking to see what work was available. He never called the claimant again nor responded to messages left for him by Mr. Banes.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant quit work for reasons which would disqualify his from receiving unemployment benefits.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The claimant had been released to return to work by his doctor and did contact the employer notifying it of this. However, the employer's representative never contacted the claimant in spite of his promise to do so. The administrative law judge can only conclude no work was available for him; and under the provisions of the above Code section, no disqualification may be imposed as of June 27, 2006.

#### DECISION:

The representative's decision of August 7, 2006, reference 02, is affirmed. Lonny Banes is qualified for benefits, provided he is otherwise eligible.

bgh/kjw