

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

JOHN A ENABNIT  
305 UNION ST  
PO BOX 105  
RYAN IA 52330

UNITED PARCEL SERVICE  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11079-SWT  
OC: 09/25/05 R: 04  
Claimant: Appellant (2)

**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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

871 IAC 24.26(6)b – Separation due to Work-related Medical Condition

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 20, 2005, reference 01, that concluded he had requested and been granted a leave of absence and was considered voluntarily unemployed. A telephone hearing was held on November 17, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked for the employer from September 24, 1973, to June 13, 2005. After June 13, 2005, the claimant was off work with a doctor's excuse due to a work-related back problem for which he received temporary total disability workers' compensation benefits until August 2005, when he received maximum medical recovery and was given a permanent partial

disability rating of 30 percent. The claimant stopped receiving temporary total disability benefits and began receiving permanent partial benefits.

The claimant has weight restrictions and restrictions on bending, twisting, and prolonged standing. After he reached maximum medical improvement, the claimant sent a letter to the employer requesting a job within his medical restrictions. In a letter dated August 29, 2005, the employer stated that it had no work within the claimant's restrictions.

The claimant is able to perform work and has applied for work that does not require heavy lifting, bending, twisting, and prolonged standing. He would be able to perform full time work as a cashier or similar light work.

Helen Villirillo called the Appeal Section at 11:47 a.m. on behalf of the employer, after the hearing had concluded. She admitted she had not followed the instructions on the hearing notice that required her to call in and provide her telephone number and was waiting for a call from someone with the Appeal Section because she had faxed information in on November 11 listing Kim Gross as the person who would be attending the hearing on behalf of the employer.

#### REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before leaving of the

work-related medical condition and that he intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The claimant has satisfied the conditions of 871 IAC 24.26(6)b. He was compelled to stop working due to a medical condition attributable to the employer, conditions at work caused his medical problems and made it impossible for him to continue in employment, and he sought a job within his restrictions but the employer did not provide him with work that accommodated his medical problems.

**DECISION:**

The unemployment insurance decision dated October 20, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjw