

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARTURO A PESINA**  
Claimant

**APPEAL NO. 09A-UI-01900-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DENISON DRYWALL CONTRACTING INC**  
Employer

**OC: 12/07/08 R: 01**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Eligibility for Benefits

**STATEMENT OF THE CASE:**

Arturo A. Pesina filed a timely appeal from an unemployment insurance decision dated February 3, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held February 26, 2009 with Mr. Pesina participating. Branch Manager John Curnyn and Office Manager Katja Ambrose participated for the employer, Denison Drywall Contracting, Inc.

**ISSUES:**

Did the claimant leave work with good cause attributable to the employer?

Is the claimant available for work?

**FINDINGS OF FACT:**

Having heard the testimony and of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Arturo A. Pesina was employed by Denison Drywall Contracting, Inc. from January 31, 2006 until August 28, 2008. He worked as a drywall finisher at a hospital construction site in Fort Dodge, Iowa. Mr. Pesina does not have a car or driving privileges. While employed he relied upon family members or walked to and from work. When his services were no longer needed at the hospital construction site, Branch Manager John Curnyn assigned him to a project in Carroll, Iowa. Mr. Pesina resigned because he had no means of commuting to that site.

Since becoming unemployed Mr. Pesina has continued to seek work in the Fort Dodge area. He also seeks work outside of Fort Dodge on occasion along with his father who provides transportation.

## **REASONING AND CONCLUSIONS OF LAW:**

The first question is whether the separation was a disqualifying event. It was not.

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 evidence establishes that Mr. Pesina was employed for seven months at a single worksite in Fort Dodge. Under these circumstances, a proposed transfer to another locality constituted a change in the conditions of employment. Further, the proposed transfer would have caused a considerable personal hardship for Mr. Pesina. See 871 IAC 24.26(1) and (20), respectively. Benefits are allowed.

The remaining question is whether Mr. Pesina is available for work.

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 evidence establishes that although Mr. Pesina does not have driving privileges at this time he has earned his base period wages in the Fort Dodge area and has continued his work search in that same locality. The record also establishes that he expands his work search from time to time in other communities with the assistance of a family member. The administrative law judge concludes from this evidence that he meets the eligibility requirement of being available for work.

**DECISION:**

The unemployment insurance decision dated February 3, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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