

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH A MATHENY
Claimant

APPEAL NO. 09A-UI-14620-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLOOMFIELD FOUNDRY INC
Employer

**Original Claim: 02/01/09
Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 25, 2009 (reference 02) decision that denied benefits based upon the July 27, 2009 temporary separation. After due notice was issued, a telephone conference hearing was held on October 27, 2009. Claimant participated. Employer participated through Operations Manager Leroy Arndt and Payroll Clerk Sheila Birchmier.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer and if he was able to and available for work effective July 27, 2009.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a core maker and shifter since 2003 and was temporarily separated on July 23, 2009. He left early due to a sore back on July 24; he did not work on July 27 and 28, because of a sore back; he worked light duty on July 29; and he did not work on July 30 and 31, 2009. He returned to regular duty on August 3, 2009. He did not claim benefits during these two weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not quit the employment but was temporarily unemployed and was not able to work and available for work the two-week period ending July 31, 2009.

Iowa Code § 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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the medical condition prevented him from working, he is not considered able to work for the period. However, since claimant did not claim benefits during those weeks, the issue is moot.

DECISION:

The representative's decision dated September 25, 2009 (reference 02) is modified without change in effect. The claimant did not quit but was not able to work and available for work for the two-week period ending August 1, 2009. Since no benefits were claimed, the issue is moot.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw