

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 O SMEBY
1032 – 17TH ST NE
MASON CITY IA 50401-1436

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
37 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 06A-UI-07817-S2T
OC: 06/25/06 R: 02
Claimant: Appellant (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, 4th 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)

Section 96.5-1-d – Voluntary Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

John Smeby (claimant) appealed a representative's August 1, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2006. The claimant participated personally. The employer was represented by David Williams, Manager of Operations, and participated by Al Bock, Assistant Store Director; Leigh Anne Abrahamson, Human Resources Manager; and Randy Black, Floral Manager. Ruth Smeby, the claimant's wife, observed the hearing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 16, 1997, as a part-time floral delivery driver. The claimant underwent surgery in mid-September 2005, which was not caused by his employment. The claimant notified the employer of his condition and the employer agreed to his absence from work.

On or about June 25, 2006, the claimant filed for unemployment insurance benefits. In August 2006, the claimant notified the employer that he was certified to return to work with restrictions by his physician. The claimant could only work two or three hours per day. On August 7, 2006, the claimant returned to work for two hours every day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did not.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant provided the employer with certification that he could return to work with restrictions and offered his services to the employer. The employer put the claimant back to work. At present the claimant is not unemployed. The claimant voluntarily quit work without good cause attributable to the employer to have his surgery. As soon as he told the employer he could return to work, the employer returned the claimant to his job.

The next issue is whether the claimant was able and available for work when he applied for unemployment insurance benefits on June 25, 2006. For the following reasons, the administrative law judge concludes he was not.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was not released to return to work by his physician until August 2006. He is considered to be unavailable for work until August 2006. The claimant is disqualified from receiving unemployment insurance benefits beginning June 25, 2006, due to his unavailability for work.

DECISION:

The representative's August 1, 2006 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The claimant was not able and available for work from June 25 to August 7, 2006.

bas/kjw