

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

ROBERT R HOSKINS
2023 LECLAIRE ST
DAVENPORT IA 52803-3037

ALLEN HARRIS EXCAVATING CO
20606 MAYSVILLE RD
DAVENPORT IA 52804

GRANT GORDON
ATTORNEY AT LAW
2208 E 52ND ST #3
DAVENPORT IA 52807

Appeal Number: 060-UI-04699-AT
OC: 01/22/06 R: 04
Claimant: Appellant (4R)

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 – Voluntary Quitting
Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Robert R. Hoskins filed a timely appeal from an unemployment insurance decision dated February 22, 2006, reference 02, which disqualified him for benefits upon a finding that he had voluntarily left employment with Allen Harris Excavating Company without good cause attributable to the employer. After due notice was issued, a telephone hearing was held on May 17, 2006, with Mr. Hoskins participating and being represented by Grant Gordon, Attorney at Law. Robin Smith testified on his behalf, and Exhibits One through Seven were admitted. Owner Allen Harris participated on behalf of the employer, Allen Harris Excavating Company. Donna Freese testified on behalf of the employer as well. The administrative law judge takes official notice of agency benefit payment records and wage records.

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: Robert R. Hoskins was a construction worker for Allen Harris Excavating Company from April 11, 2005 through July 5, 2005. On July 1, 2005 a wooden form fell, striking Mr. Hoskins. He did not think the matter was serious and continued working without notifying his supervisor. On or about July 3, 2005 Mr. Hoskins injured himself moving boxes at home. He returned to work on July 5, 2005 but left work after a short while because of pain and numbness in his neck and shoulder. He has not returned to work at Allen Harris Excavating Company since that time.

Mr. Hoskins' injuries were more serious than he initially realized. For a period of time in late 2005 Mr. Hoskins was not released to work at all. In January 2006 his physician released him for light duty work that did not require repeated lifting and which would allow him to remain seated. He contacted Mr. Harris who had no work available at that time.

During the fall of 2005, however, Mr. Hoskins worked for Wright Construction. No wages have been reported by that employer for Mr. Hoskins. When Mr. Hoskins filed his claim for unemployment insurance benefits in January 2006, he was classified as being on temporary layoff. He has been exempted from conducting a work search. No work exists in Mr. Hoskins' local labor market area for which he has the requisite job skills and which meet his medical restrictions.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Hoskins' separation from employment was a disqualifying event. The administrative law judge concludes that 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.

Under some circumstances, an individual may receive unemployment insurance benefits if the individual resigns because of a medical condition caused or aggravated by working conditions. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). The parties disagree as to whether Mr. Hoskins' initial injury occurred at work on July 1 or at home on July 3. They agree, however, that he attempted to work on July 5, 2005 but was unable to do so. Whether or not this case is determined to be a work-related injury for workers' compensation purposes, the administrative law judge concludes that Mr. Hoskins left the job site on July 7, 2005 because his work aggravated the earlier injury. The administrative law judge concludes that Mr. Hoskins met the Suluki notification requirements by speaking to Mr. Harris in January 2006 before he received any unemployment insurance benefits to see if Mr. Harris had work meeting his medical restrictions. Since Mr. Harris had none, the administrative law judge concludes that the separation was not a disqualifying event.

The second issue is whether Mr. Hoskins meets the eligibility requirement of being able to work. He does not.

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".

By his own testimony, Mr. Hoskins has established that there are no jobs in his local labor market for which he has the requisite job skills and which meet his medical restrictions. Therefore, benefits must be withheld until such time as Mr. Hoskins establishes to the satisfaction of the agency that his medical condition has improved or he has received sufficient training in other occupations.

Two issues must be remanded to the Unemployment Insurance Services Division. The first issue is whether Mr. Hoskins is indeed temporarily unemployed and exempt from conducting a work search. The second issue is the matter of potential missing wage credits from Wright Construction. The Division shall take such action as it deems appropriate to review these issues.

DECISION:

The unemployment insurance decision of dated February 22, 2006, reference 02, is modified. The claimant's separation from employment was not a disqualifying event. He is ineligible for unemployment insurance benefits, however, because he has not established that he meets the eligibility requirement of being able to work. The issues of missing wage credits and the claimant's work search requirement are remanded to the Unemployment Insurance Services Division.

cs/pjs