

**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**

**JEFFREY B ANNIS
13490 SYCAMORE RD
OTTUMWA IA 52501**

**BAKER GROUP
4224 HUBBELL AVE
DES MOINES IA 50317-4508**

**Appeal Number: 04A-UI-08653-RT
OC: 01-18-04 R: 03
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 – Voluntary Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Jeffrey B. Annis, filed a timely appeal from an unemployment insurance decision dated August 2, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on September 2, 2004, with the claimant participating. Kathy Ladd, Chief Financial Officer, (CFO), and Robert Bell, Operations Manager for the Mechanical Division, participated in the hearing for the employer, Baker Group. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a full-time plumber or pipe fitter from June 10, 2004 until July 2, 2004, which was his last day of work. On July 5, 2004, the claimant injured his toe at home, which injury was unrelated to his employment. The claimant went to see his physician and his physician restricted the claimant from working until July 10, 2004. The claimant is a member of a union, Local 33. The claimant contacted the assistant business manager, Jeff Turner, who told him that he was going to be off work for five days and asked Mr. Turner to contact the employer. Mr. Turner called Robert Bell, Operations Manager in the Mechanical Division, and informed him that the claimant was hurt and would be off work for five days. Mr. Bell did not tell Mr. Turner that there was no work available for the claimant. In fact, work was available for the claimant at that time and the employer has hired others since that time. The claimant never returned to work and has not done so thus far. The claimant also never contacted the employer. The claimant asked Mr. Turner if the claimant could assume he was laid off and Mr. Turner said that he could. However, the claimant never bothered to check with the employer as to whether there was work available, or even really checked with Mr. Turner. When the claimant was first hired by the employer no end date was given to his employment. The claimant's employment was going to be continuous and full time.

Since being released to return to work on July 10, 2004, the claimant has placed no restrictions on his ability to work or his availability for work and he is seeking work by contacting his local union office.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was, at relevant times, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for that reason.

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.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when the employer was informed by the assistant business manager at the claimant's union Local 33, that the claimant would be off work for a period of time because of a nonemployment-related injury to his toe. The claimant never returned to work thereafter even though he was released by his physician to return to work on or about July 10, 2004. The claimant testified that he believed that he was laid off due to a personal injury unrelated to his employment. However, the evidence clearly establishes that when the claimant failed to return to work after being released from his physician on or about July 10, 2004, that there was work available and continuing for the claimant if he had simply gone back to work. In fact, the employer's witness, Robert Bell, Operations Manager for the Mechanical Division, credibly testified that the employer had hired others since that time. The claimant cannot be laid off if there is work remaining and available for him, and the administrative law judge is also not aware of a layoff situation in which one is injured from an unrelated work injury. The claimant testified that he asked his union's assistant business manager, Jeff Turner, if he could assume that he was laid off and Mr. Turner answered in the affirmative. The administrative law judge is not convinced that Mr. Turner actually told the claimant that he was laid off, but, in any event, the administrative law judge is constrained to conclude here that the claimant was not laid off. Rather, the administrative law judge is constrained to conclude that he left his employment voluntarily. There is no evidence at all that the claimant ever was informed in any way that he was discharged or fired. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The only reason given by the claimant for not going back to work was the injury to his toe, which the claimant concedes is unrelated to his employment. There is no evidence that the claimant left his employment upon the advice of a licensing and practicing physician or that once recovered, he has returned and offered to perform services for the employer and no suitable comparable work was available. The evidence establishes, in fact, that the claimant has not returned and offered to go back to work. There is some evidence that the claimant may have recovered, or at least has been released to work by his physician, but the claimant has not returned to work. The only other reason given by the claimant was that he believed he was laid off but, as noted above, this belief is unreasonable. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

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 administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he is and was, after June 10, 2004, able, available, and earnestly and actively seeking work. The claimant testified that he has placed no restrictions on his ability to work since July 10, 2004, and further testified that he has placed no restrictions on his availability for work since that time. The claimant also testified that he is earnestly and actively seeking work by contacting his local union hall. Since the claimant is a union member, contacting his union hall fulfills the seeking work requirement. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits if he is otherwise entitled to benefits. However, as noted above, the administrative law judge concludes that the claimant is not entitled to receive unemployment insurance benefits because his separation from the employer was disqualifying when the claimant left his employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision dated August 2, 2004, reference 01, is affirmed. The claimant, Jeffrey B. Annis, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work.

b/b