

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

ROGER E WIXOM
314 BROADWAY ST
W BURLINGTON IA 52655

TEMP ASSOCIATES
1000 N ROOSEVELT AVE
BURLINGTON IA 52601

Appeal Number: 05A-UI-02843-CT
OC: 08/15/04 R: 04
Claimant: Appellant (4)

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 – Separation Due to Illness/Injury
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Roger Wixom filed an appeal from a representative's decision dated March 16, 2005, reference 06, which held he was not able to work. After due notice was issued, a hearing was held by telephone on April 6, 2005. Mr. Wixom participated personally. The employer participated by Debra Fox, Account Manager, and Jean Spiesz, Service Representative. The hearing was recessed to allow the parties to submit additional information. The documents were received and the hearing reconvened on April 11, 2005. Both parties again participated. Exhibits A, B, and C were admitted on Mr. Wixom's behalf. Exhibits One and Two were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Wixom began working through Temp Associates on November 18, 2004 and was assigned to work full time at Mt. Pleasant Foods. On January 25, 2005, he provided Temp Associates with a statement from his doctor taking him off work through January 31. On February 1, his wife called and indicated that he was still ill and would not be in. On February 2, his wife called and advised Temp Associates that Mr. Wixom would need to be off an additional two weeks. She was told that he would need a doctor's excuse for days missed after January 31. On February 3, the client company requested his release from the assignment. On that date, Mr. Wixom was advised that he would not need a doctor's statement for his work at Mt. Pleasant Foods because the assignment had ended. He was told that Temp Associates would need a doctor's release before he could be provided additional work.

Mr. Wixom was released by his doctor on February 13, 2005. He did not provide a copy of the release to Temp Associates at that time. He did not have further contact with Temp Associates until March 4, 2005. There was no work available at that time.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Wixom was separated from employment for any disqualifying reason. He was off work beginning January 25, 2005 for medical reasons and notified Temp Associates of the need to be absent. He was told that he would not need medical excuses for Mt. Pleasant Foods because the assignment was over. However, he was told that Temp Associates would not place him in further assignments until he presented a doctor's statement releasing him as able to work. Mr. Wixom did not contact Temp Associates in February when he was released to return to work. His first contact after the release was on March 4, 2005.

Mr. Wixom testified that he or his wife made calls to Temp Associates in February after his February 14 release. However, his telephone bill does not reflect any calls between February 2 and March 4. Therefore, he did not contact Temp Associates in February after the February 14 release. Although the employer testified during the April hearing that there had been no further contact from Mr. Wixom at any point after February 3, his telephone bills clearly indicate to the contrary. There were at least four calls to Temp Associates in March. The administrative law judge views the evidence in a light more favorable to Mr. Wixom and concludes that he notified Temp Associates of his release and re-offered his services on March 4, 2005 but no work was available. Accordingly, benefits are allowed as of March 6, 2005.

DECISION:

The representative's decision dated March 16, 2005, reference 06, is hereby modified. Mr. Wixom is denied benefits effective February 13, 2005 through March 5, 2005 as he failed to re-offer his services when released to return to work. Benefits are allowed effective March 6, 2005, provided he satisfies all other conditions of eligibility.

cfc/sc