

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROCKYN E BAKER

Claimant

APPEAL NO. 07A-UI-11392-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHAW PAINT, GLASS & LOCKSMITHING INC

Employer

**OC: 09/02/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 7, 2007, reference 04, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 28, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Jerry Schnurr. Bob Shaw participated in the hearing on behalf of the employer with witnesses, Bill Fettes and Carol Larson. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Is the claimant qualified to receive unemployment insurance benefits based on the reasons for his separation from work?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a house painter from April 1994 to January 15, 2007. He was injured at work on August 31, 2006, and since that time has been under work restrictions, including infrequent overhead reaching and significant lifting and weight restrictions.

After the work restrictions were imposed, the employer attempted to accommodate his work restrictions but often was unable to find work within the restrictions for the claimant to do. For some time, the claimant was reporting to work daily and would be sent home if there was no work within his restrictions. Management later told the claimant that he no longer had to report to work everyday, but, instead, the employer would call the claimant when there was work available.

The employer closes the business during the first two week of January each year. The claimant returned to work on January 15, 2007, but left work after a few hours with notice to the employer

after having problems with the job he was assigned because of his restrictions. He asked if there was other work available but was told there was other work for him.

The employer never contacted the claimant afterward to let him know there was work available within his restrictions. The claimant stopped in periodically and asked if the employer had any work for him but was told that the employer did not have any work within his restrictions.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 2, 2007. Since filing for unemployment insurance benefits, the claimant has been seeking full-time work within his restrictions that he is qualified to perform, including sales associate, delivery, maintenance, and counterperson jobs.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The claimant has not been discharged for misconduct and has not quit his employment. He is unemployed because the employer does not have any work meeting his restrictions. He is not subject to disqualification based on the reasons for his separation from work.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires overhead work or heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated December 7, 2007, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw