

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

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CEDAR RAPIDS IA 52405-4812

KWIK SHOP INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-07950-MT
OC: 06/13/04 R: 03
Claimant: Respondent (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 Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 14, 2004, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 16, 2004. Claimant participated. Employer participated by Jerry Sander, Hearing Representative, Employers Unity. Exhibit A was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 15, 2003. Claimant went

off work for a work related injury. Claimant was released to work with permanent restrictions April 7, 2004. Claimant asked employer for work but nothing was available to meet the severe restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant quit for good cause attributable to employer. The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a work related injury. Claimant returned to the employer to ask for work and nothing was available. This is a separation for good cause attributable to employer. Benefits are allowed.

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.

DECISION:

The decision of the representative dated July 14, 2004, reference 02, is affirmed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

mdm\kjf