

**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**

**JOHN K KLINE  
1303 E HAYNES APT 204  
MT PLEASANT IA 52641**

**TYSON FRESH MEATS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-04246-RT  
OC: 03-21-04 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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, John K. Kline, filed a timely appeal from an unemployment insurance decision dated April 9, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 6, 2004 with the claimant participating. Diane Rediger was available to testify for the claimant but not called because her testimony would have been repetitive and unnecessary. Steve Widler, Freezer Manager at the employer's Columbus Junction, Iowa, location, participated in the hearing for the employer, Tyson Fresh Meats, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department 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 freezer janitor from April 23, 2001 until he voluntarily quit on March 18, 2004. The claimant voluntarily quit upon the advice of his physician after being injured at home on December 3 or December 4, 2003 when he was in the process of going to work and stepped off the sidewalk in the parking lot at his home and pulled a muscle in his back. This injury was unrelated to his employment. The claimant had a bulging vertebrae in his back and a pinched nerve in his left leg. The claimant had first encountered these injuries in the military. However, prior to the accident on December 3 or December 4, 2003, the claimant was fully able to do his work for the employer and he did it satisfactorily. After his accident on December 3 or December 4, 2003, the claimant was not able to work for the employer. He would come to work and work off and on but would not be able to continue working. During this period of time no restrictions were placed on him by his physician. On March 18, 2004, his physician placed a 20 pound weight restriction for lifting and told the claimant to quit. The claimant went to the employer and spoke to Tim Melder and told him he was quitting at his doctor's instructions and turned in his keys and his identification. The claimant had previously asked to be fired by the employer so he could get unemployment insurance benefits but the employer had refused because the claimant was or had been doing his work appropriately. The claimant never asked for an accommodation and never expressed any concerns to the employer about his working conditions nor did he ever indicate or announce an intention to quit over any matter prior to March 18, 2004. The claimant has not recovered from his injuries and has not returned to the employer and offered to go back to work.

The claimant cannot now work and has applied for social security disability. The claimant has placed no restrictions on his availability for work but cannot work. Nevertheless the claimant is seeking employment making at least two job contacts each week but he cannot work and is only making the job search because he was told he needed to do so by Iowa Workforce Development to get unemployment insurance benefits. If the claimant had not quit, work would have been available from the employer.

#### 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 material times hereto not able, available, and earnestly and actively seeking work. The claimant is ineligible because he is not able to work.

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)b 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.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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 parties concede 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 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 claimant testified that he left his employment with the employer herein at the instructions of his physician after being injured at home when he stepped off the sidewalk on December 3 or December 4, 2003. The claimant had had some military injuries but this injury on December 3 or December 4, 2003 prevented him from working. The claimant attempted work and did work off and on but was unable to

continue working even though at that time the claimant's physician had placed no restrictions on the claimant. The claimant's physician, on or about March 18, 2004, placed a restriction of lifting no more than 20 pounds on the claimant and then instructed the claimant to quit, which he did. The administrative law judge concludes that there is not a preponderance of the evidence that the claimant was compelled to leave his employment because of anything attributable to the employment. The evidence establishes that he was satisfactorily and appropriately able to do the work for the employer prior to his injury on December 3 or December 4, 2003 but not thereafter. The accident on December 3 or December 4, 2003 was unrelated to his employment. Further, the claimant never expressed any concerns to the employer about his working conditions and never informed the employer that he intended to quit unless his concerns were corrected or reasonably accommodated. The claimant requested no accommodation from the employer. Finally, the claimant has not recovered from his injuries and has not returned to the employer and offered to go back to work. Accordingly, the administrative law judge concludes that claimant's quit was due to a non-employment related separation because of injury or illness and he has not recovered and returned and offered to go back to work and therefore his separation is not attributable to the employer. Even if an employment related separation, the claimant still does not meet the requirements for the separation to be attributable to the employer.

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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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 failed to meet his burden of proof to offer a preponderance of the evidence either that he is excused from the provisions requiring him to be able, available, and earnestly and actively seeking work or that he is able to work. There is no evidence that the claimant is either partially unemployed or temporarily unemployed so as to excuse him from the provisions requiring that he be able, available, and earnestly and actively seeking work. The claimant credibly testified that he is unable to work and has applied for social security disability. The claimant testified he has placed no restrictions on his availability for work but is not able to work. The claimant testified that he is attempting to seek work by making two job contacts each week but the bottom line is he cannot work and is only doing the job search because Workforce Development told him to. Accordingly, the administrative law judge is constrained to conclude under the evidence here that the claimant is not able to work and, as a consequence, he is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits and demonstrates that he is able, available, and earnestly and actively seeking work.

DECISION:

The representative's decision of April 9, 2004, reference 01, is affirmed. The claimant, John K. Kline, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits and demonstrates that he is otherwise eligible and is able, available, and earnestly and actively seeking work.

tjc/kjf