

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

MIKE A SLATER  
1624 KLAR RD  
PLATTEVILLE WI 53818

YAGER AUTO BODY INC  
13206 HWY 20 W  
DUBUQUE IA 52003

STEPHEN J JUERGENS  
200 SECURITY BLDG  
151 W 8<sup>TH</sup> ST  
DUBUQUE IA 52001-6832

Appeal Number: 04A-UI-12812-HT  
OC: 10/24/04 R: 12  
Claimant: Respondent (2)

**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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-1-d – Quit/Medical

STATEMENT OF THE CASE:

The employer, Yager Auto Body, filed an appeal from a decision dated November 23, 2004, reference 01. The decision allowed benefits to the claimant, Mike Slater. After due notice was issued a hearing was held by telephone conference call on December 22, 2004. The claimant participated on his own behalf. The employer participated by Owner Michael Yager and was represented by Attorney Stephen Juergens. Exhibits One, Two, Three and Four were admitted into the record.

#### 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: Mike Slater was employed by Yager Auto Body from September 2, 2003 until April 16, 2004. He was a full-time auto body technician, but his hours had been reduced to part-time the last six weeks due to his health problems.

On April 16, 2004, Mr. Slater informed Owner Michael Yager he would be off work for about 12 weeks because he was having surgery on April 20, 2004. This was for complications of an injury he sustained but which was not related to his work at Yager Auto Body. Mr. Yager told him he did good work and they would be happy to have him back when he was able to return.

The post-operative recovery period was longer than expected and it was not until August 20, 2004 that the claimant was notified he had a permanent restriction of not lifting more than 50 pounds. He had to lift this much weight on an occasional basis and more than that on a rare occasion. The employer attempted to obtain a "waiver on account of physical defect" from the Iowa Industrial Commissioner so the claimant could return to work, but was notified on September 7, 2004, such waivers were now against the provisions of the Iowa Code.

Mike Slater has received unemployment benefits since filing a claim with an effective date of October 24, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

The claimant did leave his employment to have surgery for a non-work-related condition. He has not been fully released to return to work without restrictions. A "recovery" under section 96.5-1-d means a complete recovery without restriction. Hedges v. IDJS, 368 N.W.2d (Iowa App. 1985). The claimant has not met this requirement and, under the provisions of the above Code section, must be considered a voluntary quit without good cause attributable to the employer as he has not returned to request his employment after a full release. He is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of November 23, 2004, reference 01, is reversed. Mike Slater is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,480.00.

bgh/pjs