

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

MICHAEL C GRIFFIN  
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WEBSTER CITY IA 50595

WICK BUILDING SYSTEMS INC  
PO BOX 490  
404 WALTER RD  
MAZOMANIE WI 53560

Appeal Number: 05A-UI-03310-DT  
OC: 02/27/05 R: 01  
Claimant: Appellant (5)

**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 96.4-3 – Able and Available  
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Michael C. Griffin (claimant) appealed a representative's March 24, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Wick Building Systems, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2005. The claimant participated in the hearing. Cindy Young appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on July 30, 1990. He worked full time as a field construction laborer in the employer's post-frame construction business on a crew based out of Webster City, Iowa. His last day of work was July 23, 2004.

The claimant had suffered two strokes in June 2004. He did not realize this had occurred until he went to a doctor on July 24, 2004. The doctor took him off work at that time, and the employer placed the claimant on a medical leave of absence. The claimant continues to suffer from leg weakness resulting from the strokes. As of about April 4, 2005 the claimant's doctor released him for light duty, but those restrictions include no ladder climbing and no construction work; the claimant is, therefore, currently unable to perform his essential job functions. The claimant's doctor has indicated to him that these restrictions are probably permanent. The leave of absence with the employer can continue for up to a year, and even longer if a likelihood of full recovery can be demonstrated, but if the claimant cannot return to his prior position without significant restrictions by that time or at least demonstrate that there is some likelihood that there will still be future recovery, the leave of absence and the claimant's employment will end.

#### REASONING AND CONCLUSIONS OF LAW:

The underlying issue in this case is whether the claimant is eligible for unemployment insurance benefits by being able and available for employment.

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(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

- (1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.
- (2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.
- (3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The claimant's current unemployment is due to his being on a leave of absence. He is not eligible for unemployment insurance benefits during this leave of absence.

A related issue in this case is whether the period of time in which the claimant has been off work should be treated as a temporary voluntary quit for good cause attributable to the employer.

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.

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.

While the claimant might not subjectively desire to be off work, the employer is not responsible for his inability to work during this time; therefore, the currently temporary and potentially permanent separation is due to the claimant's inability to return to work. The claimant has the burden of proving that the separation is for a good cause that would not disqualify him. Iowa

Code § 96.6-2. The claimant has not satisfied his burden. Accordingly, the temporary separation is due to the claimant's own circumstances and is without good cause attributable to the employer; benefits must be denied.

DECISION:

The representative's March 24, 2005 decision (reference 01) is modified with no effect on the parties. The claimant was not able and available for work effective July 23, 2005, and the period of temporary separation was voluntary without good cause attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits. The disqualification may be lifted by either earning ten times his weekly benefit amount in other employment or by returning to the employer without restrictions.

ld/sc