

**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**

**PATRICK S SANDERS
710 MARQUETTE ST
MUSCATINE IA 52761**

**GRAIN PROCESSING CORPORATION
1600 OREGON ST
MUSCATINE IA 52761**

**Appeal Number: 04A-UI-02965-DT
OC: 11/30/03 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, 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-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Patrick S. Sanders (claimant) appealed a representative's March 10, 2004 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Grain Processing Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2004. The claimant participated in the hearing. Bruce Levasseur appeared on the employer's behalf. 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:

The claimant started working for the employer on December 22, 2003. Initially he worked full time as a temporary laborer on the second shift in the employer's corn wet milling plant. Effective February 3, 2004, he accepted and began working a permanent position as an operator on the third shift in the employer's animal feed production facility. His normal work schedule was from 11:00 p.m. to 7:00 a.m., Sunday night through Friday morning. His last completed shift was the shift that ended at 7:00 a.m., Friday, February 13.

On Sunday, February 15, the claimant reported for the start of his shift at 11:00 p.m. He was not feeling well and had a headache, which he had been experiencing since he began working the third shift position. He told his supervisor he needed to go out to his car and get something. He started out to his car to get some aspirin, although he did not tell his supervisor what it was he was going to get or why. When he got to his car, he decided that working third shift was not going to work out for him, and so decided to leave, and did. He did not contact the employer to explain the problem or seek assistance, nor did he seek medical treatment or advice.

The claimant established a claim for unemployment insurance benefits effective November 30, 2003. He filed an additional claim effective February 15, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was 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)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 the 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.

The claimant has not presented competent evidence showing adequate health reasons to justify his quitting. Even accepting the claimant's verbal testimony, he did not obtain a diagnosis as to the cause of his illness or a recommendation to quit from a doctor. Neither before quitting did he inform the employer of the work-related health problem and inform the employer that he intended to quit unless the problem was corrected or reasonably accommodated. The claimant had accepted the third shift as a condition of his employment arrangement; his subsequent dissatisfaction with that schedule is not a good cause attributable to the employer. 871 IAC 24.25(13). A person who quits employment without good cause attributable to the employer must be disqualified from further benefits even if that person has given up unemployment insurance benefits to accept the work that was subsequently considered unsuitable. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's March 10, 2004 decision (reference 03) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 15, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/b