

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

RICHARD J BLANKENSHIP
200 N LINCOLN APT #2
KNOXVILLE IA 50138

FIVE STAR INDUSTRIES INC
815 NEWBOLD DR
PO BOX 289
KNOXVILLE IA 50138

Appeal Number: 06A-UI-00309-S2T
OC: 12/19/04 R: 02
Claimant: Appellant (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, 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 Quit for Medical Reasons
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Richard Blankenship (claimant) appealed a representative's January 4, 2006 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Five Star Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2006. The claimant participated personally. The employer participated by Randy Clark, Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on February 28, 2005, as a full-time laborer. The claimant suffered an injury on or about September 13, 2005, which was not caused by his employment. The claimant provided his supervisor with a physician's statement that indicated that the claimant could not perform his work duties. The supervisor made copies to give to the employer. The supervisor never told the claimant to report to anyone else besides the supervisor. The claimant notified the supervisor of his condition, and the supervisor agreed to his absence from work. On December 7, 2005, the claimant notified the supervisor that he was certified to return to work by his physician. The supervisor told the claimant there was no work for the claimant.

Unbeknownst to the claimant, the supervisor was not giving the documentation to the employer or notifying the employer the claimant was reporting to him. The employer sent the claimant registered letters during this period. The claimant changed his address with the United States Post Office but the Post Office did not forward the registered mail. The registered letters were returned to the employer.

The claimant reopened his claim for unemployment insurance benefits with an effective date on or about December 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons, the administrative law judge concludes he did not.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable

work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of his physician. The employer's representative consented to his leaving. The claimant has provided the employer with certification that he has recovered. In addition, the claimant has offered his services to the employer. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits.

The issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was unable to work until his release on December 7, 2005. He is considered to be unavailable for work until December 7, 2005. The claimant is qualified to receive unemployment insurance benefits beginning at the time he filed for unemployment insurance benefits, on or about December 18, 2005.

DECISION:

The representative's January 4, 2006 decision (reference 04) is reversed. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits.

bas/kjw