

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

JEREMY M PETERSEN
2330 COUNTY HOME
MARION IA 52302

SPRINGVILLE READY MIX INC
PO BOX 99
SPRINGVILLE IA 52336-0099

Appeal Number: 05A-UI-01948-SWT
OC: 11/21/04 R: 03
Claimant: Respondent (4)

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 to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 21, 2005, reference 04, that concluded the claimant had returned to work on January 2, 2005, after recovering from a medical condition but no work was available. A telephone hearing was held on March 10, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Larry Wittenburg participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer from September 2004 to November 12, 2004. After November 12, the claimant left employment with the advice of his physician due to heart problems. The claimant notified the employer of his need to be off work.

On January 13, 2005, the claimant presented a doctor's statement to the employer releasing him to return to work without restrictions effective January 7, 2005. The employer did not have work available for the claimant at that time.

The claimant filed for and received a total of \$80.00 for the week ending January 8, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code section 96.5-1-d.

The claimant has satisfied all the conditions of Iowa Code section 96.5-1-d to receive benefits effective January 9, 2005. He is not eligible to receive unemployment insurance benefits for the week ending January 8, 2005, because he was unavailable for work for a majority of the week.

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.

As a result of this decision, the claimant was overpaid \$80.00 in benefits for the week ending January 8, 2005.

DECISION:

The unemployment insurance decision dated February 21, 2005, reference 04, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits effective January 9, 2005, provided he is otherwise qualified. The claimant was ineligible to receive unemployment insurance benefits for the week ending January 8, 2005, and was overpaid \$80.00 for that week.

saw/sc