

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

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Appeal Number: 05A-UI-07006-SWT  
OC: 12/26/04 R: 02  
Claimant: Appellant (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, 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 to and Available for Work  
Section 96.5-1 - Voluntary Quit  
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 28, 2005, reference 04, that concluded he voluntarily quit employment without good cause attributable to the employer on April 20, 2005. A telephone hearing was held on July 26, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. William Fairbank, attorney at law, participated in the hearing on behalf of the employer with witnesses, Jim Wilkins and Doreen Coppinger. The parties agreed that the issues of whether the decision dated May 17, 2005, awarding benefits to the claimant became final, whether the claimant refused suitable work, and whether the claimant was available for work could be considered at the hearing.

#### FINDINGS OF FACT:

The claimant worked for the employer as a truck driver from January 27, 2005, to April 20, 2005, when he was not permitted to work. He filed an additional claim for unemployment insurance benefits with effective date of April 17, 2005.

An unemployment insurance decision was mailed to the employer's last known address of record on May 17, 2005. The decision concluded the claimant was dismissed due to his medical condition and was available for work and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 27, 2005.

The employer received the decision within the ten-day period for appealing the decision but chose not to appeal it.

On May 27, 2005, the claimant was informed that he could return to work the following week. He stated that he had a personal appointment what would not allow him to return to work right away. Later, he informed the employer that he could not start work until after June 6, 2005, because he had to take his mother to a doctor's appointment. On June 6, 2005, the claimant accepted a job with the Union Pacific Railroad and informed the employer that he would not be returning to work for the employer. The employer had full time work for the claimant during the week ending June 4, 2005.

The claimant filed for and received a total of \$334.00 in unemployment insurance benefits for the week ending June 4, 2005.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base-period employer on the claim.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely appeal of the decision dated May 17, 2005, that concluded that the claimant was dismissed due to his medical condition and was available for work.

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). The employer did not appeal the

decision dated May 17, 2005, and it became final. The claimant is qualified for unemployment insurance benefits effective April 20, 2005, based on the circumstances existing at that time.

The issue in this case is whether the claimant was able to work and available for work as required by the unemployment insurance law in Iowa Code Section 96.4-3. The circumstances changed when the employer again had full-time work for the claimant during the week ending June 4, 2005. Since the claimant could have been working full time but did not work because of personal obligations, he would be deemed unavailable for work for that week. After June 6, 2005, the claimant would be considered to have left employment to accept a job with the Union Pacific Railroad. Such a separation is not disqualifying and the employer's account will be exempt from charge when it becomes a base period employer in the future, as set forth in Iowa Code Section 96.5-1-a.

DECISION:

The unemployment insurance decision dated June 28, 2005, reference 04, is modified in favor of the claimant. The claimant was qualified to receive unemployment insurance benefits from April 17 to May 28, 2004. The claimant is ineligible for unemployment insurance benefits effective May 29, 2005, because he was unavailable for work.

saw/kjf