

**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**

**JEFFERY L EVARTS
853 HIGH BLUFF ST
DUBUQUE IA 52001-3448**

**LA LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265**

**Appeal Number: 06A-UI-01746-HT
OC: 01/15/06 R: 04
Claimant: Appellant (1-R)**

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 – Quit/Medical

STATEMENT OF THE CASE:

The claimant, Jeffery Evarts, filed an appeal from a decision dated February 1, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 1, 2006. The claimant participated on his own behalf. The employer, Sedona Staffing, participated by Unemployment Administrator Colleen McGuinty and Account Manager Kathy Hutchinson.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeffery Evarts began employment with Sedona

Staffing on September 26, 2005. On October 28, 2005, he contacted Account Manager Kathy Hutchinson and said he was in the hospital and would let her know when he was out. His next call to the employer was on November 4, 2005, when he told the account manager he was still not able to work because he was on oxygen. His doctor had diagnosed him with emphysema.

Mr. Evarts remains on oxygen as of the date of the hearing and has not been released to return to work in any occupation which requires physical labor, which is what he had been doing on behalf of Sedona Staffing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

The claimant is unable to continue working for Sedona Staffing due to restrictions on his activities by his doctor. Under the provisions of the above Code section he is disqualified until such time as his doctor releases him fully to return to work and he returns and offers his services to the employer, but no work is available.

The issue of whether Mr. Evarts is able and available in other professions or in the labor market generally should be determined by the Claims Section.

DECISION:

The representative's decision of February 1, 2006, reference 01, is affirmed. Jeffery Evarts is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

The issue of what types of work the claimant is able to do in the labor market generally, given his medical restrictions, is remanded to the Claims Section for determination.

bgh/tjc