

**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**

**DAVID W HANKS
106 N BENTON
SLATER IA 50244**

**DON & SONS BODY SHOP INC
1003 E LINCOLN WAY
AMES IA 50010**

**Appeal Number: 06A-UI-05614-HT
OC: 04/23/06 R: 02
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 – Quit/Medical

STATEMENT OF THE CASE:

The claimant, David Hanks, filed an appeal from a decision dated May 18, 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 June 15, 2006. The claimant participated on his own behalf. The employer, Don & Sons Body Shop, participated by Owner Todd Martin.

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: David Hanks was employed by Don & Sons Body

Shop from June 1993 until November 23, 2005. He was a full-time body and frame technician working strictly on commission.

Mr. Hanks took Friday, November 25, 2005 off from work. While conducting personal business his shoulder was injured. He reported to Owner Todd Martin on Monday, November 28, 2005, he would not be able to work until he had seen a doctor. The employer told him to keep in touch. Later that week the claimant reported he would have to have surgery and could not work until then.

Surgery was performed on December 27, 2005, and the claimant has not been released to return to work without restrictions. The activities he cannot perform are essential to his work as a frame and body technician.

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 was injured in a non-work-related accident and did inform the employer of his inability to work. The employer consented to the absence and both parties have maintained contact regarding Mr. Hanks' status. Regretfully the claimant has not been fully released to return to work without restrictions and has not met the requirements of the above Code section for this to be considered a voluntary quit with good cause attributable to the employer. The claimant is disqualified.

DECISION:

The representative's decision of May 18, 2006, reference 01, is affirmed. David Hanks is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/cs