

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

CHARLES P BATES
3845 TODDVILLE RD
TODDVILLE IA 52341

MENEFEE DRYWALL CO INC
1101 – 27TH AVE SW
CEDAR RAPIDS IA 52404

Appeal Number: 05A-UI-08793-HT
OC: 07/24/05 R: 03
Claimant: Respondent (4-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) - Quit

STATEMENT OF THE CASE:

The employer, Menefee Drywall Company, inc. (Menefee), filed an appeal from a decision dated August 18, 2005, reference 01. The decision allowed benefits to the claimant, Charles Bates effective July 24, 2005. After due notice was issued, a hearing was held by telephone conference call on September 13, 2005. The claimant participated on his own behalf. The employer participated by Administrative Assistant Sindy Weaver.

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: Charles Bates began employment with Menefee on March 10, 2004. He was a full-time carpenter.

On March 14, 2005, the claimant suffered a work-related back injury for which he received medical treatment. He reached maximum medical improvement as of July 12, 2005, with a permanent partial disability. The restrictions were not to lift more than 30 pounds with no bending, stretching or twisting. The superintendent notified him there was no work available to him since his job required him to routinely lift as much as 100 pounds.

Mr. Bates received temporary total disability payments through August 20, 2005. He indicated the injury was "career ending" because of the nature of his job and the restrictions imposed. Iowa Workforce Development has not determined whether he is able and available for work in the labor market given his work experience and his current restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of a serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. Raffety v. IESC, 76 N.W.2d 787 (Iowa 1956). The claimant was injured on the job and, as a result, cannot return to his job at Menefee due to the restrictions imposed by his physician. Under these circumstances it is a voluntary quit for good cause attributable to the employer and disqualification may not be imposed.

The issue of whether the claimant is currently able and available for work given his work experience and current physical restrictions, is remanded to the Claims Section for determination.

DECISION:

The representative's decision of August 18, 2005, reference 01, is modified in favor of the appellant. Charles Bates is qualified for benefits after August 20, 2005, provided he is otherwise eligible.

The issue of the claimant's availability is remanded to the Claims Section for determination.

bgh/kjw