

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ALFRED J COKER
Claimant

APPEAL NO. 07A-UI-00083-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
c/o **JOHNSON & ASSOCIATES**
Employer

OC: 11-19-06 R: 02
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able & Available
Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated December 20, 2006, reference 01, which denied benefits based upon his separation from Mosaic. After due notice was issued, a hearing was held by telephone conference call on January 29, 2007. The claimant participated. Participating on behalf of the claimant was his attorney, John Hemminger. The employer participated by Lyn Corbeil, Attorney at Law and witnesses, Jen Zajicek and Nancy Seel. Exhibits One through Three were received into evidence.

ISSUE:

At issue in this matter is whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged under disqualifying conditions.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the claimant was employed as an assistant to the disabled (Friends Aid) from September 13, 2005 until July 20, 2006. The claimant's last day of work was January 30, 2006 when he was injured because of an accident on the job. Mr. Coker sustained an ankle/knee injury and underwent surgery on his right knee and was off work under the direction of his doctors since January 30, 2006. The claimant was released on July 12, 2006 with a permanent restriction. The restrictions were based upon and were determined by Kary R. Schulte, M.D. to be related to an underlying degenerative arthritis of the knee, "not to any reported work-related injury." (See Exhibit One). Based upon the limitations that were determined to be the result of a non-work-related illness or injury, the employer could not accommodate Mr. Coker and his employment came to an end effective July 20, 2006. The claimant no longer had any paid time off available and the employer was unable to accommodate the claimant's permanent restrictions that were not work related. (See Exhibit Two).

REASONING AND CONCLUSIONS OF LAW:

In this case the claimant appears to have been willing to return to work but was restricted as to the type of work that he could accept in part at least to a degenerative knee condition which was determined by a medical practitioner to be non-work-related. (See Exhibit One). Mr. Coker did not indicate his desire to voluntarily quit his employment but indicated in a meeting held about the matter that he was not able to return to work as of July 20, 2006 and was unable to provide any information about when he might be able to return. As the claimant no longer had any paid time off available, the employer determined that the claimant's employment would end effective July 20, 2006. There has been no showing that the claimant has attempted to find work in occupational fields which would meet his limitations or that he has expanded his work search to include other types of employment that would fit his limitations or that the claimant has considered entering rehabilitation training for re-employment. Due to the permanent restrictions that have been imposed by Dr. Schulte, the claimant was advised by Mosaic that his employment was coming to an end.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

In general, a voluntary quit under section 96.5-1 means discontinuing the employment because the employee no longer desires to remain in the relationship with the employer to whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits due to disqualifying conduct pursuant to Iowa Code section 96.5-2.

Iowa Workforce Development has defined the various types of separation from employment in 871 IAC 24.1.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Quits are defined as a termination of employment initiated by the employee for any reason except mandatory retirement or transferred to another establishment of the same firm or for

service in the armed forces. A discharge is categorized as a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, absenteeism, etc. Other separations are defined as termination of employment for military duty, lasting or expecting to last more than 30 calendar days, retirement, permanent disability and failure to meet the physical standards required.

Based upon the evidence brought forward at the hearing in this matter, it is the opinion of the administrative law judge that the claimant has established that his separation from employment took place under non disqualifying conditions. Mr. Coker had not indicated to anyone at Mosaic the desire to quit his employment and the claimant had provided no notice of intention to quit. The evidence establishes that the employer did not have a position available for Mr. Coker that would fit the limitations imposed by his physician based upon Mr. Coker's medical condition. It is, therefore, the opinion of the administrative law judge that the claimant's employment was separated based upon his failure to meet the physical standards required by the employer.

Able and Available: In order to be eligible for benefits, the claimant must be able to work.

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

871 IAC 24.22(1) provides that an individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

In the opinion of the administrative law judge, based upon the evidence brought forward to hearing, the evidence does not establish that Mr. Coker is able and available for work within the meaning of the law. The evidence does not establish that the claimant is actively and earnestly seeking work.

Based upon the evidence brought forward at the hearing in this matter, the administrative law judge finds that the claimant has established that his separation from employment took place under non disqualifying conditions but does not establish that the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

DECISION:

The representative's decision dated December 20, 2006, reference 01, is hereby reversed. The claimant was separated under non disqualifying conditions. However, benefits are denied as the claimant is not able and available at this time. The claimant is disqualified until he has provided medical documentation to his local office that he is able and available for work.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/css