

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA L PALMER
Claimant

APPEAL NO. 12A-UI-10494-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 07/29/12
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

Patricia Palmer filed a timely appeal from the August 20, 2012, reference 01, decision that denied benefits. Ms. Palmer requested an in-person hearing. After due notice was issued, an in-person hearing was held in Creston on November 15, 2012. Ms. Palmer participated. David Williams of Equifax Workforce Solutions represented the employer and presented testimony through Tammy Harrah and Stephanie Gehlhaar. Exhibits One through Seven, A, B and C were received into evidence.

ISSUE:

Whether Ms. Palmer separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Patricia Palmer was employed by Mosaic as a Direct Support Associate from 1993 until June 10, 2012, when Stephanie Gehlhaar, Executive Director, discharged her from the employment in lieu of accommodating Ms. Palmer's vision disability.

Ms. Palmer had been a full-time employee at the start of her employment, but transitioned to part-time status in 2011. As a part-time employee, Ms. Palmer was scheduled to work various day and evening hours.

Ms. Palmer suffers from diabetes and associated vision impairment. Ms. Palmer also suffers from arthritis. The employer provided accommodations with regard to the arthritis and that medical problem became less of an issue when the employer switched from handwritten to typed documentation. The employer offered very temporary accommodations concerning the vision impairment issue. The employer relieved Ms. Palmer of night time driving responsibilities at work.

On May 1, 2012, Ms. Palmer's primary care doctor provided a note requesting that Ms. Palmer's work hours be adjusted so that she did not have to drive after sundown. Ms. Palmer provided

the note to the employer. The employer requested that Ms. Palmer obtain a more specific note regarding her need for physical accommodations and/or reduced work hours. On May 8, 2012, Ms. Palmer's ophthalmologist provided a note indicating that due to diabetic retinopathy and cataracts that contributed to glare and problems driving at night, Ms. Palmer would need to leave work approximately 30 minutes prior to sunset to allow her to get home prior to darkness. The doctor indicated that the night driving issue would be a long-term problem. The doctor asked that the employer accommodate Ms. Palmer's disability. Ms. Palmer provided the note to the employer on May 11, 2012. On May 14, 2012, the employer responded in writing with the following:

I must inform you that due to the long term commitment of your accommodation this is causing undue hardship for Mosaic. In order to best meet the needs of the individuals served, Mosaic will approve your accommodation until June 10. As of June 1, 2012 you will need to decide from the following options so that by June 10 you will be transitioned.

Choose a position from the open positions available that would match your current accommodations (no driving after sundown and no shifts longer than 12 hours).

Adjust your work status to PRN

Seek alternative transportation (car pool with other employees, other transportation that could drive you after dark)

Resign your position

Ms. Palmer provided a written response on June 1, 2012, in which she explained why the options provided by the employer would not work. Paradoxically, the open positions for which Ms. Palmer was qualified provided evening hours that would present the same problems vis-à-vis Ms. Palmer's vision impairment. Ms. Palmer lived 25 miles from the workplace. Ms. Palmer had no one else to drive her to or from work after dark. Ms. Palmer was not aware of any coworkers who lived in her area and the employer did not provide her with coworker information that might assist her in entering into a car pooling arrangement. Ms. Palmer was unwilling to go to PRN status because she would lose \$1.00 hourly wage differential. Ms. Palmer was unwilling to resign her position.

Ms. Palmer had commenced an approved two-week leave on May 24, 2012. While Ms. Palmer was still on the approved leave, the employer sent Ms. Palmer a letter, dated June 6. The letter indicated that the employer could not provide reasonable accommodations to address the vision impairment issue. The employer asserted that Ms. Palmer had terminated the employment. Upon receipt of the letter, Ms. Palmer contacted the employer and asserted that she had not in fact quit the employment. The employer's decision to call the employment done effective June 10, 2012 was based in large part on the employer's conclusion that it would be more difficult to accommodate Ms. Palmer's need to be done with work prior to sunset in the winter months.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The weight of the evidence fails to establish that Ms. Palmer voluntarily quit the employment. Rather, Ms. Palmer asked for reasonable accommodation of her vision disability so that she could continue in the employment. The evidence establishes instead that the employer discharged Ms. Palmer effective June 10, 2012 in lieu of providing a reasonable accommodation. The employer had an obligation to provide Ms. Palmer with reasonable accommodations that would allow her to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993).

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith

errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The evidence establishes a discharge that was not based on misconduct. Accordingly, Ms. Palmer is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's August 20, 2012, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css