

**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**

**ALBERT L MOSS  
342 FINKBINE LANE APT 3  
IOWA CITY IA 52246**

**MCI PAYROLL SERVICES LLC  
22001 LOUDOUN COUNTY PKWY  
ASHBURN VA 20147**

**Appeal Number: 04A-UI-08490-RT  
OC: 07/04/04 R: 03  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Albert L. Moss, filed a timely appeal from an unemployment insurance decision dated August 4, 2004, reference 03, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on August 31, 2004 with the claimant participating. The employer, MCI Payroll Services, LLC, did not participate in the hearing because the employer chose not to participate in the hearing and informed the administrative law judge of such in writing by fax. This appeal was consolidated with appeal 04A-UI-08491-RT for the purposes of the hearing with the consent of the claimant. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Claimant's Exhibit A was admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a part-time telephone sales representative from January or February 2004 until he was laid off for a lack of work on or about July 6, 2004. On June 25, 2004, when the claimant arrived at work, he was given a written letter informing him that the employer was going to close its business at the location where the claimant was employed and that his position would end August 24, 2004. This letter appears at Claimant's Exhibit A. The claimant was also informed at that time that he would be allowed to look for a job and he should file for unemployment insurance benefits. The employer closed the sales department where the claimant worked earlier on or about July 16, 2004. The claimant did show up for work for a period of time until on or about July 6, 2004 and began looking for work. The claimant discovered that his hours were being cut back and often he was sent home with just a few hours and the employer told the claimant he had permission to look for a job. The claimant quit going to work July 6, 2004. Prior to that time, the employer began systematically releasing certain employees and the claimant believed that he would be released at any time.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes that the claimant was effectively laid off for a lack of work on or about July 6, 2004 when he was told that he could look for a job and had learned previously by letter dated June 25, 2004 that the employer would be closing the location where the claimant worked in Iowa City, Iowa. This letter appears at Claimant's Exhibit A. The claimant continued to work for a short time after receiving that letter, but his hours were cut back and the employer began systematically releasing or laying off workers and the claimant believed that his layoff was imminent. The employer had given the employees permission to look for a job. The claimant began doing so and filed for unemployment insurance benefits. The employer chose not to participate in the hearing and thereby did not provide evidence to the contrary. On the record here, the administrative law judge is constrained to conclude that the claimant was laid off for a lack of work on July 6, 2004 and was neither discharged nor did he voluntarily quit. It is true that the letter at Claimant's Exhibit A states that he is to work until August 24, 2004, but the claimant credibly testified that in fact, his sales department closed on or about July 16, 2004 and workers were being released periodically even while he was still employed. Accordingly, the administrative law judge concludes that the claimant was laid off for a lack of work and since this is not disqualifying, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

#### DECISION:

The representative's decision dated August 4, 2004, reference 03, is reversed. The claimant, Albert L. Moss, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was laid off for a lack of work.

kjf/kjf