

**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**

**LEONARD S KAY
RTE 2 BOX 108A
OQUAWKA IL 61469**

**ALFAGOMMA AMERICA INC
3520 WEST AVE
BURLINGTON IA 52601**

**Appeal Number: 05A-UI-03634-CT
OC: 02/27/05 R: 04
Claimant: Respondent (1R)**

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 – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Alfagomma America, Inc. filed an appeal from a representative's decision dated March 29, 2005, reference 01, which held that no disqualification would be imposed regarding Leonard Kay's separation from employment. After due notice was issued, a hearing was held by telephone on May 3, 2005. The employer participated by Matt Brakeville, Operations Manager, and Tom Hanyok, General Manager. Exhibit One was admitted on the employer's behalf. Mr. Kay did not respond to the notice of hearing until after the hearing record was closed. Because his failure to participate was due to his failure to follow the instructions on the hearing of notice, the administrative law judge declined to reopen the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Kay began working for Alfacomma America, Inc. on December 15, 2003 and worked full time as an assembler. He was off work beginning approximately February 15, 2005 because of an injury sustained away from work. When he returned to work on February 21, he presented a doctor's statement which prohibited him from performing assembly work at the assembly table. The employer provided Mr. Kay with other work for two days but did not have any further work he could perform within his restrictions. He was sent home and told he could not return to work until he obtained a release that would enable him to perform his usual job.

On April 22, 2005, the employer contacted Mr. Kay because there was other work again available for him. During the interim after February 22, he had not presented the employer with a full release to work. Mr. Kay notified the employer on April 22 that he had accepted work elsewhere.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Kay was separated from employment for any disqualifying reason. He was initially off work due to an injury that was not work-related. Although he was not physically able to perform his usual job when he re-offered his services on February 21, the employer allowed him to return to work. If the employer had not allowed him to return on February 21, he would be disqualified from benefits pursuant to Iowa Code section 96.5(1)d. This section requires that an individual have a full release when returning to work after an injury that is not work-related. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). However, by allowing Mr. Kay to return, the employer acquiesced to his restrictions. Therefore, when he left on February 22, it was due to lack of work within his restrictions. Accordingly, no disqualification is imposed as of the effective date of the claim, February 27, 2005.

Mr. Kay has subsequently quit the employment to take work elsewhere. Therefore, he is not entitled to benefits as of the Sunday of the week in which he notified the employer that he would not be returning, April 17, 2005.

DECISION:

The representative's decision dated March 29, 2005, reference 01, is hereby affirmed. Mr. Kay was separated from employment on February 22, 2005 for no disqualifying reason. Benefits are allowed, provided he satisfies all other conditions of eligibility. Benefits are denied effective April 17, 2005 as Mr. Kay voluntarily quit the employment.

cfc/pjs