

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN MORAS
Claimant

APPEAL NO. 07A-UI-06929-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 06/03/07 R: 03
Claimant: Appellant (2)

Iowa Code section 96.5(2)(a) – Discharge
Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Adrian Moras filed a timely appeal from the July 12, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 30, 2007. Mr. Moras participated and was represented by attorney Philip Miller, who presented additional testimony through Sister Irene Munoz. Melissa Skinner, Assistant Human Resources Manager, represented the employer. Spanish-English interpreter Oliver Koch assisted with the hearing. Exhibits One, Two, Three, A and B were received into evidence.

ISSUE:

Whether there has been a separation from the employment or whether the claimant is still employed at the same hours and wages with Cargill Meat Solutions. The administrative law judge concludes there has been a separation.

Whether the claimant or the employer initiated the separation. The administrative law judge concludes the employer initiated the separation.

Whether the claimant was suspended or discharged for misconduct that would disqualify him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adrian Moras was employed by Cargill Meat Solutions as a full-time production worker from December 14, 1999 until June 4, 2007, when the employer placed him on a forced leave of absence. On May 1, 2007, the employer's in-house doctor imposed permanent medical restrictions affecting Mr. Moras' employment at Cargill. The work restrictions were based on one or more work-related medical conditions. The work restrictions limited the amount of weight Mr. Moras could lift to 15-33 pounds, depending on the frequency and nature of the lift. The work restrictions limited Mr. Moras to occasional pushing or pulling up to 110 pounds. The work

restrictions restricted Mr. Moras to occasional walking, climbing ladders, stooping, crouching, kneeling, squatting and crawling.

Between May 1 and June 4, Mr. Moras continued to perform work for the employer in an alternate, or light-duty, work assignment he had commenced prior to May 1. Mr. Moras' original work assignment had involved lifting 150-200 pounds on a regular basis. On June 4, the employer notified Mr. Moras that the employer was no longer willing to keep him in the alternate work assignment. The employer invoked its "Bid Review Process for Medical Walk-Through – Work Comp" policy. This policy required Mr. Moras to compete with other employees for open positions that complied with his work restrictions. If another employee had more seniority, the open position would go to the other employee. According to the employer, there were no open positions that complied with Mr. Moras' work restrictions. Pursuant to the employer's "Bid Review Process for Medical Walk-Through – Work Comp" policy, the employer compelled Mr. Moras to commence an extended period of unpaid leave. Mr. Moras was allowed to continue his medical benefits, provided he paid the premium. Under the employer's policy, Mr. Moras would only be allowed to return to the employment if he successfully "bid" against other employees for an open position that met the work restrictions imposed by the employer. Mr. Moras had indicated no intention to quit the employment and was willing to continue in the duties he had performed up to June 4, 2007.

REASONING AND CONCLUSIONS OF LAW:

The employer asserts that the claimant is on an extended medical leave of absence. The claimant asserts there has been a separation from the employment initiated by the employer. In Wills v. Employment Appeal Board, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee presented a 25-pound lifting restriction and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). The lifting restriction in Wills was based on a non-work-related medical condition, whereas the restrictions in the present case were based on a work-related medical condition. In Wills, the Court found that the 25-pound lifting restrictions may have limited the employee's ability to perform regular duties, but that the lifting restriction did not make the employee unable to work as a general principle. Here, also, Mr. Moras' lifting restriction may have made him unable to perform his original labor-intensive duties, but did not make Mr. Moras unable to work as a general principle. Nor did Mr. Moras' condition prevent him from performing the alternate assignment he had been performing for a considerable period. In Wills, as in the present case, the employer asserted that it had no work available that would meet the employee's medical restrictions. However, the evidence in the present matter clearly demonstrates that the employer did in fact have work available that met Mr. Moras' medical restrictions and that Mr. Moras performed that work until June 4, when the employer elected to cease making the work available to Mr. Moras. As was the case with Wills, Mr. Moras at no time indicated an intention or desire to separate from the employment. In Wills, the Court concluded that the employer's actions were tantamount to a discharge. So, too, the employer's actions in the present matter effected an involuntary separation from the employment tantamount to a discharge.

The employer had an obligation to provide Mr. Moras with reasonable accommodations that would allow him to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993). The evidence indicates that the employer had the ability to reasonably accommodate Mr. Moras' medical restrictions without undue hardship to the employer and that the employer had in fact been accommodating the medical restrictions until June 4, 2007.

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 in the record fails to establish any misconduct on the part of Mr. Moras. Accordingly, Mr. Moras is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Moras.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits 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.

(1) Able to work. 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The evidence further establishes that Mr. Moras is able to engage in gainful employment as demonstrated up to June 4, 2007. Regardless of whether Mr. Moras is able to perform his original labor-intensive duties for this employer, Mr. Moras' medical restrictions do not prevent him from performing other gainful employment.

DECISION:

The Agency representative's July 12, 2007, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged. The claimant has been able to work and available for work since establishing his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw