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

SHAYNE A COCHRAN
1812 ALDEN AVE
CEDAR FALLS IA 50613

COMMUNITY MOTORS COMPANY INC
4521 UNIVERSITY AVE
CEDAR FALLS IA 50613

Appeal Number: 04A-UI-06604-RT
OC: 05/16/04 R: 03
Claimant: Appellant (4-R)

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 – Voluntary Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Shayne A. Cochran, filed a timely appeal from an unemployment insurance decision dated June 11, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on July 12, 2004, with the claimant participating. Debra Nichols, Office Manager, participated in the hearing for the employer, Community Motors Company, Inc.

The claimant had not called in a telephone number prior to the hearing. The administrative law judge called the employer and began the hearing. The claimant called the Appeals Section at

2:12 p.m. and left a number where he could be reached. The administrative law judge called the claimant at that number at 2:15 p.m. and the claimant participated in the balance of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time detailer from August 8, 2003 until he separated from his employment on May 12, 2004. The claimant averaged 30 or more hours per week. However, the employment was at all material times part-time. On or about April 20, 2004, the claimant was injured while at work. Although he was eventually released to return to work he had restrictions of not lifting over 20-25 pounds; no prolonged standing or walking; no excessive bending; and he was allowed to sit or stand as necessary. The employer was able to meet these restrictions. First, the employer had the claimant take and make phone calls and then provided the claimant light janitorial duty. On May 12, 2004, the claimant came to work expecting to make phone calls. When he was assigned to light janitorial duty, he asked to go home to change his clothes. The employer permitted the claimant to do so. The claimant then called the employer and informed the employer that he did not want to do the light janitorial work and would not be returning to work and would not be doing that work. The claimant has never returned to the employer thereafter. The claimant never expressed any concerns to the employer about his working conditions except that he did not want to do the janitorial work and never indicated or announced an intention to quit prior to his separation. On May 25, 2004, the claimant was given a full release by his doctor to return to work, but the claimant has not returned to the employer. When the claimant did not return to work, the employer mailed the claimant a letter indicating that he had been terminated as a voluntary quit and because he had not shown up for work. Since filing for unemployment insurance benefits, the claimant placed restrictions on his ability to work only as noted above until they were fully released on or about May 25, 2004. The claimant has also placed no restrictions on his availability for work and the claimant was earnestly and actively seeking work until he obtained employment.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. The claimant's separation was a voluntary quit without good cause attributable to the employer, but because it was of part-time work, the claimant is not automatically disqualified to receive unemployment insurance benefits if he is otherwise monetarily eligible for unemployment insurance benefits based on wages paid by other base period employers.

2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for this reason if he is otherwise entitled to benefits.

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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

871 IAC 24.26(6)a,b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

871 IAC 24.25(21), (27) provide:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (27) The claimant left rather than perform the assigned work as instructed.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily left his employment or quit when he called the employer and informed the employer that he did not want to do the work as assigned, would not be doing it, and then never returned to work. The claimant maintains that he was discharged when he received a letter from the employer indicating that he had been terminated because he had walked off the job. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant voluntarily left his employment. Both the employer's witness, Debra Nichols, Office Manager, and the claimant both testified that after coming to work on May 12, 2004 for approximately one-half to one hour, he then left to change his clothes and never return. Rather, the claimant called the employer and said that he did not want to do the work he was assigned, would not do the work assigned, and was not returning to work. The claimant has not returned to work. The claimant was injured on the job on April 20, 2004 and given substantial restrictions of not lifting over 20-25 pounds, no prolonged standing or walking, no excessive bending, and being allowed to sit or stand as necessary. The employer was able to meet these restrictions and offered the claimant continued employment first by making telephone calls and then light janitorial work. These jobs met the claimant's restrictions. However, the claimant refused to do the light janitorial work because he did not want to do it. Therefore, the claimant walked off the job and has never returned to the employer or contacted the employer. Eventually, the employer sent the claimant a letter indicating that he was terminated because he had walked off the job and not returned to work. The administrative law judge concludes that when the claimant walked off the job after being offered light-duty work which would meet his restrictions, that he both demonstrated an intention to terminate the employment relationship and perform an overt act to carry out that intention as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The evidence establishes that the claimant left his employment with the employer herein because

the claimant did not want to do the light-duty work he was assigned and refused to do the work and walked off the job. Leaving work voluntarily because of dissatisfaction with the work environment or rather than perform the assigned work as instructed is not good cause attributable to the employer. The claimant had also never expressed any concerns about his working conditions nor had he never indicated or announced an intention to quit.

The claimant was injured on the job, but there is no present competent evidence showing adequate health reasons to justify quitting or termination because the employer had work that met the claimant's work restrictions. There is also no evidence that the claimant ever indicated to the employer an intention to quit unless the problem was corrected or reasonably accommodated and as noted above his restrictions were accommodated by the employer. The claimant has never returned to the employer and offered to go back to work. Accordingly, the claimant's quit is not with good cause attributable to the employer either for an employment related illness or injury separation or a non-employment related illness or injury separation.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer. However, because the claimant voluntarily quit part-time employment, he is not automatically disqualified to receive unemployment insurance benefits. If the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers the claimant shall not be disqualified to receive unemployment insurance benefits. However, any unemployment insurance benefits to which the claimant might be entitled shall not be made based on wages paid by the part-time employer herein and any unemployment insurance benefits to which the claimant is entitled shall not be assessed against the account of the part-time employer herein. Since it is impossible for the administrative law judge to determine whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits and, if so, the amount of such benefits after excluding the wages paid by the part-time employer herein, this matter must be remanded to claims for an investigation and determination as to whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits and, if so, the amount of such benefits after deducting any wages paid by the part-time employer herein. The account of the part-time employer herein shall not be charged with any unemployment insurance benefits to which the claimant is entitled.

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".

The administrative law judge concludes that the claimant has the burden to prove that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269

(Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he is and was, at all material times hereto, able, available, and earnestly and actively seeking work. The claimant testified that he had placed no restrictions on his ability to work following his full medical release from his doctor on May 25, 2004 and that he has placed no restrictions on his availability for work and was earnestly and actively seeking work at least until he found other employment. The evidence also establishes, as noted above, that the employer was able to meet the claimant's restrictions prior to his full release but the claimant chose not to work. Therefore, the administrative law judge concludes that the claimant was able to work even before his full release from physician. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant, at all material times hereto, was able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits if he is otherwise entitled.

DECISION:

The representative's decision dated June 11, 2004, reference 02, is modified. The claimant, Shayne A. Cochran, left his employment voluntarily without good cause attributable to the employer. However, because that employment was part-time, the claimant is not automatically disqualified to receive unemployment insurance benefits, if he is otherwise monetarily eligible for such benefits based on the wages paid by other base period employers without consideration of the wages from the part-time employer herein. This matter must be remanded to claims for an investigation and determination as to whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on such wages paid by other base period employers and, if so, a determination as to the amount of such benefits without considering the wages paid by the part-time employer herein. The claimant is, and was, at all material times hereto, able, available, and earnestly and actively seeking work.

REMAND:

This matter is remanded to claims for an investigation and determination as to whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers without considering the wages paid by the part-time employer herein, Community Motors Company, Inc., and if so, the amount of such benefits without considering the wages paid by the part-time employer herein. Any unemployment insurance benefits to which the claimant shall be entitled shall not be assessed against the account of the part-time employer herein.

kjf/tjc