

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L VERMACE
Claimant

APPEAL NO. 08A-UI-10389-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 10/05/08 R: 03
Claimant: Appellant (3)

Section 96.5(2)a – Discharge for Misconduct
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Richard Vermace filed an appeal from a representative's decision dated October 30, 2008, reference 01, which denied benefits based on his separation from The University of Iowa (UI). After due notice was issued, a hearing was held by telephone on November 20, 2008. Mr. Vermace participated personally and was represented by Adnan Mahmutagic, Attorney at Law, who offered additional testimony from Linda Vermace. Exhibits A and B were admitted on Mr. Vermace's behalf. The employer participated by Dave Bergeon, Human Resources Specialist, and Suzanne Hilleman, Human Resources Generalist.

ISSUE:

At issue in this matter is whether Mr. Vermace was separated from employment for any disqualifying reason. There is also an issue of whether he is able to and available for work within the meaning of the law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Vermace began working for UI on July 1, 2000 and last performed services on June 22, 2007. He was employed full time as a custodian. He stopped working in June of 2007 because of problems with his feet. In August of 2008, he advised the employer of his permanent medical restrictions, restrictions that prevented him from performing his usual job. The employer did not have other work for which he was qualified that fell within his restrictions. Therefore, he was terminated from the employment effective September 29, 2008, when his medical leave expired.

Mr. Vermace can only be on his feet for 15 minutes of every hour. He cannot lift over ten pounds and cannot work on ladders. He has a ninth-grade education with no additional training. He has prior work experience as a roofer and truck driver. He also has experience as a farm worker. Mr. Vermace does not feel he would be able to return to any of his former jobs. He has been making application primarily for cashier positions.

REASONING AND CONCLUSIONS OF LAW:

It appears undisputed that UI initiated Mr. Vermace's separation from employment when he was terminated because he could not return to his job. An individual who was discharged from employment is only disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has not alleged any misconduct as a contributing factor in the decision to terminate Mr. Vermace's employment. He was discharged solely because he could not meet the physical demands of the job. Inasmuch as there was no misconduct on his part, his separation effective September 29, 2008 was not a disqualifying event.

There is also an issue of whether Mr. Vermace is able to work as required by Iowa Code section 96.4(3). He cannot perform his former jobs of custodian, roofer, truck driver, or farm worker. Although he has been making application for cashier positions, such positions would seem inconsistent with his doctor's recommendation that he should only be on his feet for 15 minutes each hour. This limitation on his walking and standing severely limits the number of jobs he could perform. His limited education and lack of training further limits the number of available jobs. Mr. Vermace has failed to establish to the satisfaction of the administrative law judge that there are jobs in the labor market he could perform given his education, prior work experience, and medical condition. It is concluded, therefore, that he has failed to establish that he is able to work within the intent and meaning of the law. Therefore, benefits are denied as of the effective date of his claim for benefits, October 5, 2008.

DECISION:

The representative's decision dated October 30, 2008, reference 01, is hereby modified. Mr. Vermace was separated from UI for no disqualifying reason effective September 29, 2008. Benefits are denied effective October 5, 2008 as Mr. Vermace was not able to work. Benefits are withheld until such time as he establishes to the satisfaction of Workforce Development that he is able to work, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw