

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

ALPHA JALLOPH
924 S HANCOCK
OTTUMWA IA 52501

EXCEL CORPORATION
c/o TALX UC EXPRESS
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ST LOUIS MO 63166-0283

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Appeal Number: 05A-UI-02983-CT
OC: 01/09/05 R: 03
Claimant: Respondent (1)

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
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Excel Corporation filed an appeal from a representative's decision dated March 7, 2005, reference 01, which allowed benefits to Alpha Jalloph. After due notice was issued, a hearing was held by telephone on April 7, 2005. Mr. Jalloph participated personally and was represented by Philip Miller, Attorney at Law. The employer participated by Tonya Teeter, Human Resources Manager

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. Jalloph began working for Excel Corporation on April 30, 2002 as a full-time production worker. He sustained a work-related injury to his right hand on August 25, 2003 and was off work until March 15, 2004. He was released for light-duty work and was assigned to the frock room.

Mr. Jalloph has little or no use of the right hand, which is his dominant hand. On December 1, 2004, he was offered work on the kill floor performing the same job he was performing prior to his injury, herding animals. The employer's medical staff believed the job was one Mr. Jalloph could perform in spite of his injury. The job requires the use of both hands, one to use the electric prod and one to hold the paddle used to herd animals. Mr. Jalloph and others in this job have always used both hands to perform the work. Mr. Jalloph declined the December 1 offer because he did not have full use of his right hand. Because there was no other work he could perform within his medical restrictions, Mr. Jalloph was placed on a leave of absence at the employer's initiative. He became separated from the employment effective December 24, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Jalloph was separated from employment for any disqualifying reason. He became separated from Excel Corporation because the employer no longer had work available within his medical restrictions. Although he was placed on a leave of absence, it was not at his request but at the employer's initiative. Mr. Jalloph retains the ability to perform some work which is engaged in by others as a means of livelihood. The fact that he can no longer meet the demands of his former job does not preclude his ability to perform other work.

After considering all of the evidence, the administrative law judge concludes that Mr. Jalloph was separated from employment for no disqualifying reason and satisfies the availability requirements of Iowa Code section 96.4(3). Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 7, 2005, reference 01, is hereby affirmed. Mr. Jalloph was separated from employment for no disqualifying reason and remains available for work. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs