

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

MELISSA A WALKER
3135 – 8TH ST
DES MOINES IA 50313-4001

MOSAIC
c/o TALX
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 06A-UI-03642-HT
OC: 02/12/06 R: 02
Claimant: Appellant (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) – Quit

STATEMENT OF THE CASE:

The claimant, Melissa Walker, filed an appeal from a decision dated March 21, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 19, 2006. The claimant participated on her own behalf. The employer, Mosaic, participated by Program Coordinator Tammy Linton and was represented by TALX in the person of Lynn Corbeil. Exhibits One and Two were admitted into the record.

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: Melissa Walker was employed by Mosaic from March 16, 2004 until April 12, 2005. She was a full-time residential assistant. The claimant injured her back in an accident in her home and was on FMLA until March 2005. She was returned to work without restrictions but re-injured her back at work on March 15, 2005.

The employer's physician returned her to work with restrictions on March 16, 2005, and the employer complied with those restrictions. On March 29, 2005, Ms. Walker notified Program Coordinator Tammy Linton she was quitting because she did not feel she could continue to do the job properly. She was also concerned she might injure herself again. The employer offered her a position at another of the residences but she declined.

The claimant did not make an attempt to discuss with the employer if there were any other options available to her for a leave of absence since she had already exhausted her FMLA. Her personal physician had recommended she take more time to heal. Ms. Walker felt she might be fired if she made such a request although the employer indicated she was an excellent employee and Mosaic would have been willing to explore alternatives with her.

The claimant's last day of work was to be April 13, 2005, but she called in sick on that day and worked only through April 12, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The claimant quit because she felt she would not be able to perform her job to the employer's satisfaction. The employer was complying with her physical restrictions and did not have any problem with her work performance. She did not have any recommendation from a physician to quit, only to "take more time to heal." Ms. Walker quit rather than explore any possibility of further available leave from the employer. There is nothing in the record to support her fear she would have been fired had she asked for a leave of absence other than the FMLA which had been exhausted.

Ms. Walker has been released to return to work but has never approached Mosaic to be reinstated in her former job or a similar job. Under the provisions of the above Code section this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 21, 2006, reference 01, is affirmed. Melissa Walker is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/tjc