IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DANA A COSSMAN
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL NO. 12A-UI-13781-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/21/12
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Dana Cossman filed a timely appeal from the November 9, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 15, 2013. Mr. Cossman participated. The employer waived participation in the hearing. Exhibits A and B were received into evidence.

ISSUEs:

Whether Mr. Cossman separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether Mr. Cossman has met the work ability and work availability requirements since he established his claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dana Cossman started his full-time employment with Archer-Daniels-Midland Company in 2000 and last performed work for ADM on October 16, 2011. Mr. Cossman's work with ADM involved installing electrical instrument devices. The work required standing and climbing.

On October 17, 2011, Mr. Cossman commenced an approved medical leave of absence. Mr. Cossman had twisted his ankle a few years earlier in a non-work-related incident. Prior to Mr. Cossman commencing the leave of absence, a doctor had concluded that Mr. Cossman's ankle required reconstructive surgery. Mr. Cossman underwent reconstructive surgery on his ankle on October 17, 2011. The surgery did not go well. When medical staff removed the initial bandages post-surgery, Mr. Cossman had a sizeable blood blister. What followed were at least three additional ankle surgeries, two of which involved skin grafts. Mr. Cossman's ankle did not begin to properly heal until after Mr. Cossman underwent surgery on May 10, 2012 to have a metal plate removed from his ankle. For six weeks after that surgery, Mr. Cossman received IV antibiotics. After the course of antibiotics, Mr. Cossman participated in physical therapy. Mr. Cossman has never been released by a doctor to return to work.

While Mr. Cossman was on the approved leave of absence, ADM's long-term disability benefits approved Mr. Cossman for long-term disability benefits. Mr. Cossman was still receiving $1,500.00 per month in long-term disability benefits at the time of the January 15, 2013 appeal hearing.

At some point during the approved leave period, Mr. Cossman spoke to the employer about the possibility of returning to work on light-duty status. The employer advised Mr. Cossman that the employer did not have light-duty work available to him. Mr. Cossman had not been released to return to work on light-duty status or otherwise.

ADM's work rules included a leave provision that indicated any employee off work for 12 consecutive months would lose his "seniority and employee status." In other words, the employer would deem the employment terminated.

On October 19, 2012, ADM Plant Manager Jim Woll mailed Mr. Cossman a letter by certified mail. The letter included the following main paragraph:

> The Loss of Seniority section of your Hourly Handbook provides that an employee off work for over 12 consecutive months will lose their seniority and employee status. Effective October 17, 2012, you will have been off work for 12 consecutive months and your employment with ADM will be terminated. This should not have an effect on your entitlement to long-term disability benefits. If you feel you can return to work with or without a reasonable accommodation, please call [telephone number omitted by administrative law judge] by October 26, 2012. Termination of employment will proceed if contact is not made prior to this date.

A week after Mr. Cossman received the employer's letter, he telephoned ADM and spoke the head of the human resources department, who affirmed the position the employer had taken in the letter, that the employment was done because Mr. Cossman had been gone a year.

On November 12, 2012, Mr. Cossman made contact with Mark Nieman, head of ADM construction. Mr. Nieman told Mr. Cossman he could return to full-time employment with the employer as soon as he had a full medical release to do so. Mr. Cossman has never sought or obtained such a release.

In August 2012, Mr. Cossman commenced a search for new employment that would be less strenuous than that he performed at ADM. Again, Mr. Cossman had neither obtained a medical release nor presented the employer or Workforce Development with a medical release indicating he is able to work in any capacity.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The employer waived participating in the hearing. Thus, the evidence in the record is limited to Mr. Cossman's testimony, his appeal form, and the October 19, 2012 letter from the ADM Plant Manager to Mr. Cossman.

The weight of the evidence establishes that Mr. Cossman initially went off work for the limited purpose of undergoing non-work-related reconstructive surgery on his ankle. Mr. Cossman could not have foreseen the complications that would greatly prolong his time away from work. The evidence does not establish an intent on the part of Mr. Cossman to permanently sever the employment relationship at the time he commenced the approved leave of absence. The employer, or its agent, later approved long-term disability benefits. The effect of that action was to acknowledge Mr. Cossman's continued legitimate need to be off work due to an inability to perform his regular duties at ADM. That situation had not changed at the time the employer notified Mr. Cossman in October 2012 that the employer was calling the employment done. Prior to that date, Mr. Cossman had expressed interest in returning to the employment on light-duty status and had been rebuffed by the employer. Mr. Cossman had not presented the employer with a medical release to perform light-duty work. In any event, the evidence does not establish a voluntary quit on the part of Mr. Cossman. The evidence indicates instead a year-long medical leave of absence that Mr. Cossman requested and the employer approved. Mr. Cossman's inability to return to the employment by the end of the year-long leave, due to not being released by a doctor to return to the work, did not constitute a voluntary quit. The evidence indicates instead that the employer elected to call the employment done, rather than wait further for Mr. Cossman to be released to return to work.

The weight of the evidence in the record establishes that the employer discharged Mr. Cossman from employment. The discharge was effective October 19, 2012. The discharge was not based on any misconduct on the part of Mr. Cossman. The discharge would not disqualify Mr. Cossman for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and Iowa Administrative Code rule 871 IAC 24.32(1)(a) (regarding discharges for misconduct and the associated disqualification for unemployment insurance benefits). Mr. Cossman would still have to meet all other eligibility requirements. The employer's account may be charged for benefits.

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 and (2) provide:

> 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.
>
> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Administrative Code rule 871 IAC 24.23 provides in relevant part as follows:

> Availability disqualifications.
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> The following are reasons for a claimant being disqualified for being unavailable for work.
>
> 24.23(1) An individual who is ill and presently not able to perform work due to illness.
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> ...
>
> 24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Mr. Cossman was, and perhaps still is, under the care of a physician for an extended period due to a serious health issues. While Mr. Cossman asserts he is able to perform some work, just

not the work he used to do for ADM, Mr. Cossman has not presented Workforce Development with a medical release indicating that he is in fact released to perform any full-time work. In the absence of such documentation, the administrative law judge concludes Mr. Cossman has met his burden of proving that he has been able to work or available for work since he filed his claim for unemployment insurance benefits. Benefits are denied effective October 21, 2012. The able and available disqualification continued as of the January 15, 2013 appeal hearing and will continue until such time as Mr. Cossman presents competent medical evidence establishing that he is released to perform full-time work. Mr. Cossman will have to otherwise demonstrate his availability for full-time work.

DECISION:

The Agency representative's November 9, 2012, reference 01, decision is modified as follows. The claimant was discharged for no disqualifying reason effective October 19, 2012. The discharge would not disqualify the claimant for unemployment insurance benefits. The claimant would be eligible for benefits if he met all other eligibility requirements. The employer's account may be charged for benefits.

The claimant has not met the work ability and availability requirements since he established his claim for benefits. Benefits are denied effective October 21, 2012. The able and available disqualification continued as of the January 15, 2013 appeal hearing and will continue until such time as the claimant presents competent medical evidence establishing that he is released to perform full-time work. The claimant will have to otherwise demonstrate his availability for full-time work.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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