

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL C CURRAN
Claimant

APPEAL NO. 08A-UI-06816-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRIPROCESSORS INC
Employer

**OC: 12/30/07 R: 04
Claimant: Appellant (2-R)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able to Work

STATEMENT OF THE CASE:

Russell C. Curran filed a timely appeal from an unemployment insurance decision dated July 23, 2008, reference 04, that disqualified him for benefits upon a finding that he had voluntarily left employment on June 29, 2008, due to an injury that was not related to his employment. After due notice was issued, a telephone hearing was held August 11, 2008, with Human Resources Manager Elizabeth Billmeyer participating for the employer. Mr. Curran did not provide a telephone number at which he could be contacted.

ISSUE:

Did the claimant voluntarily leave employment?

Was the claimant discharged for misconduct?

Is the claimant able to work?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Russell C. Curran worked as a maintenance technician for Agriprocessors, Inc., from June 4, 2008, until June 30, 2008. On that date, he provided medical documentation to his supervisor that indicated he had suffered a fracture of a bone in one of his feet in an accident at home. The physician restricted Mr. Curran to working while seated. The company declined to offer light-duty work to Mr. Curran because the injury was not one suffered while at work. The company has no paid leave provisions aside from FMLA. Since Mr. Curran had been an employee for less than a month, he was not eligible for FMLA leave.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. The earlier determination characterized it as a voluntary quit. In order to find a voluntary quit, the evidence

must establish that the claimant intended to sever the employment relationship and carried out some act in furtherance of that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The administrative law judge finds no evidence in this record that Mr. Curran sought to sever the employment relationship. The evidence establishes quite the opposite. Mr. Curran attempted to obtain light-duty work from the employer.

Similarly, the administrative law judge finds no evidence that the employer discharged Mr. Curran for misconduct or for any other reason. It merely told Mr. Curran that it had no work available for him at that time. Since the employer initiated the separation due to a temporary inability to provide employment to the individual, the administrative law judge concludes that the separation should be characterized as a layoff. A layoff is not a disqualifying separation. Benefits are allowed.

A question remains as to whether Mr. Curran meets the eligibility requirement of being medically able to work. That issue must be remanded to the Unemployment Insurance Services Division for initial adjudication.

DECISION:

The unemployment insurance decision dated July 23, 2008, reference 04, is reversed. The claimant's separation from employment was not a disqualifying event. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The issue of whether the claimant is medically able to work is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw