

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELLCAH N GROVER**  
Claimant

**APPEAL NO. 11A-UI-08381-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 05/22/11  
Claimant: Appellant (2-R)**

Section 96.5(1) – Voluntary Separation to Care for Injured Family Member

**STATEMENT OF THE CASE:**

Elcah Grover filed a timely appeal from the June 17, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 11, 2011. Ms. Grover participated. David Williams of TALX represented the employer and presented testimony through Teresa Tekolste and Ben Humiston. Exhibits One, Two, Three, Five and Six were received into evidence.

**ISSUE:**

Whether Ms. Grover's separation from the employment was for good cause attributable to the employer. It was.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Elcah Grover was employed by Mosaic as a full-time direct support assistant from 2002 and last performed work for the employer on March 4, 2011. At about that time, Ms. Grover received word that her family had been attacked in Kenya and that multiple members of her family were hospitalized in Kenya. Those who had been attacked included Ms. Grover's father, brother, and sister. Ms. Grover's father and brother were both hospitalized. Two cousins had also been attacked and were hospitalized, but died from their injuries. Upon receiving word of her family's situation, Ms. Grover filed a written request with the employer for time off from work so that she could go home and assist her family. Ms. Grover did not know how much time she would need. The employer was only willing to give her until March 14, 2011 to return to work.

Ms. Grover left for Kenya on March 5. Ms. Grover did not learn the full extent of the carnage visited up on her family until she arrived in Africa. Ms. Grover assumed primary responsibility for seeing that her family members received necessary medical care.

Ms. Grover contacted her immediate supervisor, Ben Humiston, Supportive Living Coordinator, on March 11. Ms. Grover told Mr. Humiston that she needed more time, was not going to be able to return to work by March 14, and that she would fax additional information. The call then terminated.

Ms. Grover followed up with a fax, which the employer did not receive.

Ms. Grover made further contact with Mr. Humiston during the week of March 14. Ms. Grover told Mr. Humiston that she need more time, more than a month. Mr. Humiston told Ms. Grover that if she needed more time, she would have to resign. Ms. Grover told Mr. Humiston that she did not want to resign because she needed a job to return to. Ms. Grover said that she would send a fax and that she wanted the employer to treat her time off as unpaid leave. Mr. Humiston reiterated that she would need to resign and reapply later if she needed to be gone longer. Ms. Grover said, "I guess if that's what I have to do, I want to do that."

Ms. Grover's family continued to require her assistance for an extended time. Ms. Grover's sister was discharged from the hospital at the beginning of April. Ms. Grover's brother was discharged from the hospital on April 18. Ms. Grover's father was discharged from the hospital on April 24, 2011. Ms. Grover's father continued to need assistance with his cares and mobility up to the time that Ms. Grover left Kenya to return to the United States on March 9. Ms. Grover arranged for on-going nursing assistance for her father before she returned to the United States.

Ms. Grover arrived back in the United States on May 10 and made contact with Mr. Humiston on May 10 or 11 to request to return to work. Mr. Humiston told Ms. Grover that she had resigned during their last phone conversation, that her job had been filled, that he did not have any openings for her, but that she could contact the employer's human resources department to reapply. Ms. Grover had not accepted any other employment during her absence from the employment with Mosaic.

After the conversation with Mr. Humiston, Ms. Grover did not make contact with the employer's human resources department. Ms. Grover became ill and learned that she had a blood clot. There was not further contact.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Administrative Code section 871 IAC 24.26(8) echoes the statute and defines "immediate family" as follows:

The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and

offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

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 weight of the evidence establishes that Ms. Grover left the employment for the necessary and sole purpose of taking care of members of her immediate family who had been injured in an attack. After Ms. Grover's family had sufficiently recovered, Ms. Grover immediately returned to the United States, contacted the employer and offered her services. The employer, through Mr. Humiston, told Ms. Grover that the employer considered her to have separated from the employment, that her position had been filled, that the employer did not have work for her, but told her she could reapply. Ms. Grover had not accepted other employment. Pursuant to Iowa Code section 96.5(1)(c), Ms. Grover's separation from the employment was for good cause attributable to the employer. Ms. Grover is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Grover.

The evidence raises the question of whether Ms. Grover has been able to work and available for work since she established the claim for benefits that was effective May 22, 2011. This matter will be remanded to the Claims Division for adjudication of those issues.

**DECISION:**

The Agency representative's June 17, 2011, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for adjudication of the issues of whether the claimant has been able to work and available for work since she established her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css