

**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**

**MARK A ACKLEY SR
601 S IOWA ST
CHARLES CITY IA 50616-3206**

**ALL-STATES QUALITY FOODS
901 N MAIN
PO BOX 365
CHARLES CITY IA 50616**

**Appeal Number: 06A-UI-02029-CT
OC: 01/29/06 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)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Mark Ackley filed an appeal from a representative's decision dated February 13, 2006, reference 01, which denied benefits based on his separation from All-States Quality Foods. After due notice was issued, a hearing was held by telephone on March 9, 2006. Mr. Ackley participated personally and Exhibit A was admitted on his behalf. The employer participated by Tim Prenevost, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ackley began working for All-States Quality

Foods on April 4, 2005 as a full-time shipping clerk. His job involved operating a forklift and occasionally driving the employer's truck. In December of 2005, he began experiencing spells in which he would pass out. As a result, his doctor advised that he could not drive or work around machinery. As such, he could not perform the essential functions of his job. He has not been advised that his condition is work related. Mr. Ackley has been advised by his doctor to refrain from driving or involving himself in hazardous activities until he has gone at least six months without an episode of passing out. He last worked for the employer on January 29, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Ackley was separated from employment for any disqualifying reason. He left the employment because his doctor advised him not to drive or work around hazardous machinery. There has been no evidence that his condition was caused or aggravated by the employment. He was not advised to remain away from the work because the work would aggravate his condition. Rather, he was to remain off work because he could experience an episode of passing out while driving or while around dangerous machinery, thereby injuring himself and/or others.

Pursuant to Iowa Code section 96.5(1)d, an individual must return to his employer and re-offer his services after recovering from an illness or an injury. It is not at this time anticipated that Mr. Ackley's restrictions will be permanent. Therefore, it is presumed that he will be released to resume driving and working around machinery at some future point. Until such time, it must be concluded that he has not recovered from his condition as required. Because his condition is not work-related, he must be free from all restrictions if and when he re-offers his services to the employer. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985). Until such time as he has recovered from his condition and re-offered his services to the employer, Mr. Ackley is disqualified from receiving job insurance benefits.

DECISION:

The representative's decision dated February 13, 2006, reference 01, is hereby affirmed. Mr. Ackley was separated from All-States Quality Foods but has not met the requirements of Iowa Code section 96.5(1)d. Benefits are withheld until such time as he either recovers from his condition and re-offers his services to the employer or until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/tjc