

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ABDISALAM M ALI
Claimant

APPEAL 22O-UI-14314-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 06/06/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 4, 2021 (reference 03) unemployment insurance decision that denied benefits finding claimant voluntarily quit employment on March 31, 2021 without good cause. The parties were properly notified of the hearing. A telephone hearing was scheduled for November 29, 2021. No hearing was held because appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing. The administrative law judge registered the appellant based upon information gathered from the appeal letter. The appellant was not available at the telephone number on the appeal letter; therefore, no hearing was held. On December 8, 2021, the Administrative Law Judge issued a default decision dismissing the appeal (see appeal 21A-UI-22399-AW-T).

Claimant appealed to the Employment Appeal Board (EAB). On February 25, 2022, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on April 12, 2022. Claimant participated. Employer participated through Myra Zamudio, Human Resources Manager. Somali interpretation was provided by Mohamed (ID: 14167) of CTS Language Link. No exhibits were admitted. Official notice was taken of the administrative record. On April 20, 2022, the Administrative Law Judge issued a decision affirming the October 4, 2021 (reference 03) decision denying benefits finding claimant voluntarily quit without good cause attributable to employer (see appeal 22R-UI-05465-AW-T).

Claimant appealed to the EAB. On June 27, 2022, the EAB remanded this matter to the Appeals Bureau for a new hearing to develop the record. The remand was not limited to specific issues. Upon remand, due notice was issued and a hearing was held on August 4, 2022. Claimant did not participate personally or through counsel. Employer participated through Mira Zamudio, Human Resources Manager. No interpretation services were provided. No exhibits were admitted. Official notice was taken of the administrative record and all evidence presented at the April 12, 2022 hearing.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time with West Liberty Foods from June 24, 2021 until August 31, 2021. Claimant did not perform this work as an independent contractor or on assignment through a temporary employment firm. Claimant was an employee of West Liberty Foods. During his employment, claimant earned gross wages of \$7,278.73. Employer does not know why claimant's wages from West Liberty Foods are not reflected in his wage credits.

When claimant began his employment, he was a Cooler Operator working with meat products, which included pork. The products were labeled. On August 6, 2021, claimant notified employer that he could not work with pork products for religious reasons. Employer moved claimant to a position in the spice room where claimant would not have any contact with meat products. Claimant tried the position for a few weeks and told employer that he liked it.

On August 31, 2021, employer offered claimant the job in the spice room. Claimant declined stating that he had to step in pork juices when he walked across the production floor to get to the spice room. Claimant walked across the production floor to get to the spice room from August 6, 2021 through August 31, 2021 and did not bring this concern to employer's attention. There were no pork products in the production area between August 6, 2021 and August 31, 2021. Employer explained that the spice room was the only position employer had that did not include some contact with meat products. Claimant also told employer that he could not accept the position in the spice room because he could not lift the bags of spices. Claimant's job duties with regard to lifting and preparing spices did not change between August 6, 2021 and August 31, 2021.

Employer had continuing work available for claimant in the spice room. Claimant's job was not in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The standard of what a reasonable person would have believed under the

circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find claimant's testimony that he informed employer that he could not work with pork when he began his employment to lack credibility. I also find claimant's testimony that he was unaware that he was working with pork products between June 24, 2021 and August 6, 2021 to lack credibility. Finally, I find employer's testimony credible that claimant's job in the spice room did not require contact with pork.

When claimant informed employer that he did not want to work with pork, employer immediately transferred claimant to work in the spice room – the only position employer had that did not require contact with pork. Claimant worked in the spice room between August 6, 2021 and August 31, 2021 and did not bring any issues to employer's attention. Claimant declined the position when it was offered to him on August 31, 2021. Claimant discontinued his employment relationship with West Liberty Foods and has not met his burden of proving good cause attributable to employer. Benefits are denied.

DECISION:

The October 4, 2021 (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily quit his employment without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge

September 26, 2022
Decision Dated and Mailed

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.