

**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**

**ARISELIA PESINA  
1290 RIPLEYS CT  
MUSCATINE IA 52761**

**WEST LIBERTY FOODS  
207 W 2<sup>ND</sup> ST  
PO BOX 318  
WEST LIBERTY IA 52776**

**Appeal Number: 05A-UI-11441-CT  
OC: 10/16/05 R: 04  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

West Liberty Foods filed an appeal from a representative's decision dated October 28, 2005, reference 01, which held that no disqualification would be imposed regarding Ariselia Pesina's separation from employment. After due notice was issued, a hearing was held by telephone on November 28, 2005. The employer participated by Ann Hocke, Assistant Human Resources Manager. Ms. Pesina did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Pesina began working for West Liberty Foods on October 8, 2004 through a temporary placement firm. She became a West Liberty Foods

employee on July 18, 2005 and last worked full time as a utility person on first shift. Ms. Pesina was told when she became a full-time employee that she would have to find a permanent job within the facility, as she could not remain a utility person.

On or about September 24, 2005, Ms. Pesina was notified that the employer had two openings in production jobs. She was offered a position on second shift with hours from 3:00 p.m. until 11:30 p.m. She declined this position because of childcare issues. She was also offered a position on first shift in cut-up. The job did not require heavy lifting. Ms. Pesina quit rather than accept either position.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Pesina was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Pesina quit because she did not want to transfer to either of the jobs the employer had available for her on a permanent basis. She knew when she was hired by West Liberty Foods that she would have to find a permanent position. She knew the employer never intended that she remain a utility person. Although she may have had good cause not to accept the position on second shift because of childcare issues, the evidence does not establish any justification for her refusal of the first shift position in cut-up.

Ms. Pesina indicated in her fact-finding statement that she declined the job in cut-up because it would require her to lift 75 pounds. The employer processes turkeys and denied that she would have to lift 75 pounds in performing the job. Ms. Pesina also indicated that she declined the position because she had recently been in a car accident and her hand was swollen. The administrative law judge presumes that the swelling would have resolved itself within a few days and would not have been a factor in Ms. Pesina performing the job once her hand healed. Ms. Pesina quit rather than attempt the transfer to cut-up. Inasmuch as she had not been promised a permanent placement as a utility person, the fact that she was being asked to transfer to a different job did not constitute good cause attributable to the employer for quitting. Accordingly, benefits are denied.

Ms. Pesina has not claimed job insurance benefits since filing her claim effective October 16, 2005. Therefore, this reversal of the prior allowance does not result in an overpayment of job insurance benefits.

#### DECISION:

The representative's decision dated October 28, 2005, reference 01, is hereby reversed. Ms. Pesina voluntarily quit her employment with West Liberty Foods for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjw