

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENDA L SANDERS**  
Claimant

**APPEAL NO. 09A-UI-17976-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**Original Claim: 10/25/09  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed a representative's November 19, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on December 30, 2009. The claimant participated in the hearing. Jean Spiesz, the human resource manager, and Donald Hensley appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her work for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2007. The claimant worked full-time. Her most recent job was in the boxing department and Hensley supervised her.

On October 25, 2008, the claimant submitted her notice of resignation. The claimant indicated her last day of work would be November 28, 2008, because she was relocating to Rockford, Illinois, for family reasons. When the claimant's plans to move to Rockford did not materialize, she talked to a human resource employee before November 28 and asked if she could continue working instead of resigning. The claimant understood the employer would allow her to continue her employment.

On December 5, 2008, the employer decided to downsize and planned to lay off some employees. Before laying off anyone, the employer asked employees if they would be willing to take a voluntary layoff. The employer understood the claimant offered to take a voluntary layoff because she was going to move to Chicago at the end of December and the layoff would give her time to get ready to move. The employer informed the claimant the employer would not protest her unemployment insurance claim until December 28, 2008, the date the employer understood the claimant's last day of work because she was moving to Chicago. As a result of the early layoff, the claimant's last day of work was December 5, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-1. The parties do not dispute that the claimant initially gave the employer a one-month notice that she was resigning as of November 28, 2008, because she was moving to Rockford, Illinois. Sometime before November 28, the claimant's plan to move to Rockford did not work out and she asked a human resource representative if she could continue to work for the employer. About this same time, the employer decided to reduce its workforce and offered employees a voluntary layoff.

Although the claimant denied she volunteered to take the voluntary layoff, a preponderance of the evidence establishes the claimant took the early voluntary layoff. The law presumes that a claimant who leaves employment in lieu of exercising the right to bump or oust a fellow employee with less seniority is eligible for benefits. 871 IAC 24.26(27). Since the employer allowed the claimant to rescind her resignation on November 28, 2008, it is not known if the claimant would have considered moving to Chicago if the employer did not decide to reduce the number of employees and layoff some employees. The reason for her employment separation as of December 5, 2008 is because she took a voluntary layoff so other employees could continue working. Therefore as of October 25, 2009, the claimant is qualified to receive benefits.

During the hearing, the claimant asked why the employer had not protested her unemployment insurance benefits in her first claim year, October 25, 2008 through October 25, 2009. The administrative record shows that the claimant initially established a claim for benefits during the week of October 25, 2008, and filed for partial benefits until December 7, 2008. The claimant then reported no wages and continued filing for benefits. The employer did not protest her receipt of benefits. It was not until the claimant established a new benefit year, the week of October 25, 2009, that the employer protested charges against its account and a fact-finding was completed that addressed the claimant's December 5, 2008 employment separation.

**DECISION:**

The representative's November 19, 2009 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that qualify her to receive benefits. As of October 25, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw