

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAGDALENO VALENCIA
5 DEBBIE AVE
MUSCATINE IA 52761-5947**

APPEAL NO. 09A-UI-17491-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WEST LIBERTY FOODS LLC
207 W 2ND ST
PO BOX 318
WEST LIBERTY IA 52776-0318**

APPEAL RIGHTS:

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:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

**PAUL MCANDREW JR
ATTORNEY AT LAW
2771 OAKDALE BLVD STE 6
CORALVILLE IA 52241**

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:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

SERVICE INFORMATION:

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

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAGDALENO VALENCIA
Claimant

APPEAL NO. 09A-UI-17491-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**Original Claim: 10/18/09
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 12, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 3, 2010. Claimant participated and was represented by Paul McAndrew, Attorney at Law. Employer opted not to participate.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a utilities worker and was separated from employment on January 21, 2009. His last day of work was in early November 2008. Employer claimed he quit by not appearing for a meeting on January 21, 2009, but he did appear and signed up for three jobs he believed he was medically able to perform.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 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.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant did not quit and the conduct for which he was discharged simply did not occur, as he did report to the meeting and signed a document indicating which three jobs he believed he was able to perform. Benefits are allowed.

DECISION:

The November 12, 2009 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw