

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L MONTGOMERY
Claimant

APPEAL NO. 09A-UI-14719-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**Original Claim: 09/06/09
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit for Other Employment
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

David L. Montgomery (claimant) appealed a representative's September 29, 2009 decision (reference 02) that concluded he was not qualified to receive benefits, and the account of West Liberty Foods LLC (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2009. The claimant participated in the hearing. Monica Dyar and Raul Arroyo, the plant superintendant, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. 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.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on April 23, 2009. The employer hired the claimant to work full-time packaging meat. When the employer hired the claimant, he learned the employer had a no-fault attendance policy. Unless an absence was covered under FMLA, a day of illness is counted as an attendance point under the employer's policy. The employer's policy informs employees they can be discharged after they have accumulated ten attendance points and have received a Stage III warning. On August 13, 2009, the claimant received notice he had accumulated 11.5 attendance points. The employer told the claimant that if he accumulated a point or even half point, he would be discharged. (Employer Exhibit One.)

The claimant understood his job was in jeopardy and contacted Team Staffing about jobs. The morning of September 3, a Team Staffing representative called the claimant about a job. At that time, the claimant was not available because he was still working for the employer. On September 3, the claimant did not feel well and asked his supervisor if he could leave work early.

The claimant's supervisor explained that he could not let the claimant go home early because he was already shorthanded. The claimant responded by indicating he had to leave and it did not matter if the employer discharged him because he had another job he could go to the next morning. (Employer Exhibit Two.) The claimant left work early and the employer no longer considered him an employee.

The claimant started working a job assignment for Team Staffing on September 4. He completed that assignment on September 8, or right after Labor Day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 96.5-2-a. A claimant who leaves employment to accept other employment and performs services for the new employer is not disqualified from receiving benefits. Also, the employer's account will not be charged. Iowa Code § 96.5-1-a.

The claimant understood his job was in jeopardy when he received notice he had 11.5 attendance points and could not accrue even another half point. On September 3, the claimant knew he had a job if he wanted one with Team Staffing, because he had been contacted that morning about a job. When the employer told the claimant on September 3 it was his choice to stay or leave, the claimant made the decision to leave knowing he had another job lined up the very next day. Under these facts, the claimant quit his employment to accept other employment. Therefore, the claimant is not disqualified from receiving benefits. Also, the employer's account will not be charged.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The facts indicate the claimant has a work restriction, but it is not so restrictive that the claimant is required to look for a tailor-made job. The claimant established he is able to and available for work.

DECISION:

The representative's September 29, 2009 decision (reference 02) is reversed. The claimant voluntarily quit his employment because he had another job that started the next day. As of September 6, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account will not be charged. The claimant established that he is able to and available for work as of September 6, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw