

**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**

**MARIA MUNIZ  
711 E 6<sup>TH</sup> ST  
MUSCATINE IA 52761-4311**

**WEST LIBERTY FOODS  
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PO BOX 318  
WEST LIBERTY IA 52776**

**Appeal Number: 06A-UI-03265-S2T  
OC: 02/19/06 R: 04  
Claimant: Respondent (5)**

**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 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

West Liberty Foods (employer) appealed a representative's March 8, 2006 decision (reference 01) that concluded Maria Muniz (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2006. The claimant participated personally through Ike Rocha, Interpreter. The employer participated by Joyce Carroll, Corporate Safety Manager, and Anne Hocke, Human Resources Assistant Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 13, 1981, as a full-time lung gunner.

On March 16, 2005, the claimant fell over some big floor mats that were piled up in a wet hallway. The claimant had surgery on her left knee and returned to work with restrictions on or about September 6, 2005. The claimant successfully performed light-duty work.

On December 6, 2005, the employer administered a functional capacity test. They received the results on February 17, 2006. The test indicated that the fall had aggravated arthritis in the claimant's left knee. The arthritis was not work-related and the claimant could not return to full-capacity because of the arthritis. The employer would not allow the claimant to return to the surgeon who performed the surgery because he believed the claimant's inability to function at full capacity was due to the work-related injury. The employer immediately terminated the claimant because she could not perform her job-functions due to a non-work-related condition.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes she was not.

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). 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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer admitted that the claimant suffered a work-related injury which aggravated arthritis. The employer did not dispute that the claimant was terminated for the arthritis which was aggravated by the work-related injury. The employer did not provide sufficient evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The March 8, 2006, reference 01, decision is modified with no effect. The claimant was separated from her employment due to a work-related injury. Benefits are allowed, provided the claimant is otherwise eligible.

bas/kkf