

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BENJAMIN C PADILLA**

Claimant

**APPEAL NO. 13A-UI-02705-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 02/03/13**

**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated February 28, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, the case was heard on April 15, 2013, by telephone conference call. The claimant participated personally. The claimant was represented by Andrew Bribriesco, attorney at law. The employer was present by Nikki Bruno, human resources supervisor; Dwight Ferguson, safety manager; and Kathy Truelson, human resources manager. The employer was represented by Sarah Franklin, attorney at law. Steven Rhodes served as Spanish interpreter.

The hearing could not be completed on April 15, 2013. This case was reconvened on June 28, 2013. The interpreter that was supposed to be available did not answer her phone despite being called twice. The parties wanted to continue with the hearing. Mr. Bribriesco speaks fluent Spanish and the claimant waived the presence of an interpreter for the remainder of the hearing. The claimant testified and was cross examined when the interpreter was present at the first hearing.

The record consists of the testimony of Benjamin Padilla; the testimony of Nikki Bruno; the testimony of Dwight Ferguson; Claimant's Exhibits A-F; and Employer's Exhibits 1-5.

**ISSUE:**

Whether the claimant was separated from his employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a meat processing production facility located in West Liberty, Iowa. The claimant was hired on May 24, 2004. His job was box meat and raw pack. He was a full-time employee. The claimant's last day of actual work was December 17, 2012. At that time he was placed on Family Medical Leave Act (FMLA) leave because he had personal medical restrictions of no lifting over 30 pounds.

On January 9, 2013, the claimant was offered a job that fit his restrictions. He was offered the "drawer" position. The claimant did not accept the position. He was unable to physically perform his prior job of box meat. The claimant was terminated by the employer on January 31, 2013, because there were no jobs available that the claimant was physically capable of performing.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Iowa Code section 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 claimant is eligible for unemployment insurance benefits provided he is able and available for work and meets all other eligibility requirements. This case presents the very difficult issue of when an individual is eligible for unemployment insurance benefits where there is a separation due to personal medical reasons. In this case, the evidence showed that the claimant was terminated. Ms. Bruno was specifically asked if the claimant was terminated and she said yes. When there is a termination, the only way that the claimant can be disqualified is if the employer proves that the claimant was discharged for a current act of misconduct. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. There is no evidence of misconduct in this case. The claimant may have made a bad decision in turning down the job offered to him on January 9, 2013. But poor judgment is not misconduct. Benefits are therefore allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated February 28, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs