FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Laura Danner was employed by Pella from June 30, 1997 until May 5, 2005. She was a full-time assembly operator.

In December 2003 the claimant injured her back at work. She was released with maximum medical improvement on April 22, 2005. A functional capacity exam was performed by the third-party, Work Systems Rehab. The claimant's restrictions were sent to the employer and a meeting was held on May 5, 2005, with the claimant, her personal physician Dr. McQueen, Nurse Shirley Tonka, Human Resources Manager Jeff Heuton, and Plant Manager Lee Stork.

The group went into the plant work area to review various jobs to determine if any of them were within the claimant's restrictions. Only three were found to be completely within Ms. Danner's capabilities. The employer was willing to make accommodations such as shortening her work shift, modifying work stations and have a trainer/mentor on hand. While she agreed the jobs were within the restrictions imposed, she felt she would not be able to do any of them because she was still "in a lot of pain."

The claimant left that day without committing to any of the jobs and Mr. Heuton wrote her a letter on May 10, 2005, indicating Pella considered her a voluntary quit because she had refused available work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant cannot be considered a voluntary quit. A voluntary quit requires an intention to quit accompanied by an overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the present case the claimant thought she was being asked to review and consider some of the jobs the employer felt would be within her work capabilities. The record establishes she was not told at the time of the May 5, 2005, meeting that she must either take one of the jobs she agreed were within her capabilities, or she would be considered a voluntary quit. She felt she was free to refuse if, as her doctor said, she determined the duties would cause her too much pain.

The claimant did not quit and the separation must be considered a discharge. A discharge must be for a willful and deliberate current act of misconduct. Refusing a job because she felt it would cause her to re-injure her back or would cause too much pain to do safely, is not a volitional act intended to be contrary to the employer's best interests.

Disqualification may not be imposed as a result of the claimant's separation from employment.

DECISION:

The representative's decision of July 13, 2005, reference 01, is reversed. Laura Danner is qualified for benefits provided she is otherwise eligible.

bgh/kjf