

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BENITO VELIZ PERZ**  
Claimant

**APPEAL NO. 09A-UI-10001-C**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS**  
Employer

**Original Claim: 12/28/08  
Claimant: Appellant (2)**

Section 96.52)a – Discharge for Misconduct  
Section 96.5(1)f – Separation for Compelling Personal Reasons

**STATEMENT OF THE CASE:**

Benito Veliz Perez filed an appeal from a representative's decision dated July 2, 2009, reference 03, which denied benefits based on his separation from West Liberty Foods. After due notice was issued, a hearing was held on August 3, 2009 in Burlington, Iowa. Mr. Perez participated personally and offered additional testimony from Matilda Alvado. The employer participated by Monica Dyar, Human Resources Specialist; Jean Spiesz, Human Resources Manager; Adelberto Ruiz, Production Supervisor; and Mike Farnett, Second Shift Production Supervisor.

**ISSUE:**

At issue in this matter is whether Mr. Perez was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Perez worked for West Liberty Foods from December 24, 2007 until May 14, 2009 as a full-time production worker. His last day at work was May 8, 2009. His wife contacted the employer to request a leave of absence because his brother was hospitalized in Mexico. Mr. Perez was already on his way to Mexico when the request was made. His request was denied because of his attendance history. He had 7.5 attendance points and an individual is subject to discharge when he reaches 10 points.

The employer discharged Mr. Perez effective May 13 because he reached 10.5 attendance points. His wife was notified he no longer had a job. He returned to Iowa on May 13 when his brother was feeling better, but did not contact the employer because his wife had been told his job was no longer available.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. There must be a current act of unexcused absenteeism to support a disqualification from benefits. 871 IAC 24.32(8).

In the case at hand, Mr. Perez' discharge was prompted by his absences after May 8, 2009. The absences were due to his brother's hospitalization out of the country. The administrative law judge considers this reasonable cause for missing work. Mr. Perez' wife notified the employer that her husband had left town for a family emergency. The employer was notified in the leave request that he did not know how long he would be gone. For the above reasons, it is concluded that the absences after May 8 are excused absences. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

The administrative law judge appreciates that the employer denied Mr. Perez' request to be gone on a leave of absence. For this reason, the administrative law judge has also considered the provisions of Iowa Code section 96.5(1)f. An individual is allowed job insurance benefits if he left employment for compelling personal reasons, notified the employer of the need to be gone, and was gone ten days or less. The brother's hospitalization constituted a compelling personal reason within the meaning of the law. Mr. Perez was discharged prior to the expiration of ten days. For the above reasons, he would be allowed benefits pursuant to section 96.5(1)f.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Perez was separated from West Liberty Foods for no disqualifying reason. Accordingly, benefits are allowed.

## **DECISION:**

The representative's decision dated July 2, 2009, reference 03, is hereby reversed. Mr. Perez was separated from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw