

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KURT W NICHOLS**  
Claimant

**APPEAL NO. 09A-UI-09009-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHARLES DRAKE & ASSOCIATES**  
Employer

**Original Claim: 05-17-09  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 17, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 9, 2009. The claimant did participate. The employer did participate through Charles Drake, owner, and Kendra Hughes, Personnel Manager.

**ISSUE:**

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Freeman Decorating as a laborer beginning on February 28, 2009 through March 7, 2009. The claimant stopped reporting for work at Freeman Decorating and stopped reporting to the employer due to his incarceration from March 11 through May 7, 2009. The claimant acknowledged being incarcerated during scheduled workdays. Due to the incarceration, employer may reasonably consider the absences, reported or unreported, a voluntary leaving of employment without good cause attributable to the employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

871 IAC 24.25(16) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998).

The claimant's incarceration on multiple scheduled workdays was not a good-cause reason attributable to the employer for leaving. Employer's attribution of the absences as a voluntary leaving of employment was reasonable, as it is not expected to hold employment for incarcerated employees. Benefits are denied.

**DECISION:**

The June 17, 2009, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw