

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN K KICKHAUT**  
Claimant

**APPEAL NO. 08A-UI-01078-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RHODEN AUTO CENTER INC**  
Employer

**OC: 12-23-07 R: 01  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 28, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 14, 2008. The claimant did participate. The employer did participate through Dave Borg, Service Director, and Joe Gautreau, Body Shop Manager, and was represented by Lynn Corbeil of TALX UC eXpress.

**ISSUE:**

Did the claimant voluntarily quit her 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 employed as a body shop office manager, full-time, beginning March 12, 2007, through December 27, 2007, when she voluntarily quit.

The claimant had a car accident in the early morning hours of December 24 and was arrested and charged with driving while under the influence. Around 4:30 a.m. on December 24, the claimant left the employer a message on their answering phone indicating that she was incarcerated and did not know when she would be back to work. The claimant was off work on December 25 due to the holiday. The claimant was to return to work on December 26, 2007, after the holiday. The claimant did not call in or show up for her shift. The employer had no idea when the claimant would be returning to work, as she was in jail. The employer could not wait indefinitely for the claimant to let them know when she would be returning to work.

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 her employment without good cause attributable to the employer.

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.

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 section 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 section 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 January 28, 2008, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw