

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC DAVIS
Claimant

APPEAL NO: 09A-UI-18047-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE TJX COMPANIES INC
Employer

OC: 11-01-09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 11, 2010. The claimant participated in the hearing. Johnie Allshouse, Assistant Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time associate for TJX Companies from August 7, 2009 to October 26, 2009. The claimant acknowledged being incarcerated from October 21 to November 2 or 3, 2009. He was scheduled to work October 21, 22 and 26, 2009. He attempted to call the employer collect October 21, 2009, but the associate that answered the phone did not accept his calls. He did not try to call the employer October 22 or 26, 2009, because he assumed they would not accept another collect call. He tried to call the employer sometime after October 26, 2009, with a prepaid phone card but the associate who answered the phone hung up on him. The claimant asked his brother to pick up his check and notify the employer he was in jail October 30, 2009, and his brother did so but was not allowed to pick up the claimant's check because the employer did not have written authorization stating he could pick up the check. After the claimant was released from jail November 2 or 3, 2009, he went to the store and asked if he was on the schedule and was notified he had been removed from the system. Due to the incarceration, the 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 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.

While understanding that the claimant did not "voluntarily" quit his job in the traditional sense of the word, the law classifies separations from employment due to incarceration as a voluntary leaving of employment. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. (Emphasis added) Iowa Code section 96.6(2) (amended 1998). The claimant's incarceration on multiple scheduled workdays was not a good-cause reason attributable to the employer for his leaving. The employer's attribution of the absences as job abandonment and a voluntary leaving of employment were reasonable as it is not expected to hold employment for incarcerated employees. Consequently, benefits must be denied.

DECISION:

The November 23, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css