

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS D LOEHR
Claimant

PERISHABLE DISTRIBUTORS OF IA LTD
Employer

APPEAL 24A-UI-07532-LJ

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/04/24
Claimant: Appellant (5)**

Iowa Code § 96.5(11) – Disqualifying Separation due to Incarceration

STATEMENT OF THE CASE:

On August 22, 2024, claimant Nicholas D. Loehr filed an appeal from the August 19, 2024 (reference 01) unemployment insurance decision that denied benefits, determining Mr. Loehr quit his employment on July 3, 2024 through a three-day no-call/no-show. In his appeal, Mr. Loehr requested an in-person hearing. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on August 23, 2024. Administrative Law Judge Elizabeth A. Johnson held an in-person hearing at the Wallace State Office Building at 10:30 a.m. on Thursday, September 12, 2024. Claimant Nicholas D. Loehr (“Claimant” or “Mr. Loehr”) personally participated. Employer Perishable Distributors of Iowa Limited (“PDI”) participated through Janel Mortale, Director of Human Resources. Holly Figenshaw appeared but did not testify. Claimant’s Exhibit A and Employer’s Exhibits 1 through 14 were received and admitted into the record. Mr. Loehr objected to Exhibits 5 and 6 as incomplete; those exhibits were admitted over objection. Mr. Loehr objected to Exhibit 14 as irrelevant; that exhibit was admitted over objection.

ISSUE:

Whether claimant quit without good cause attributable to the employer or was discharged from employment for disqualifying, job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge enters the following findings of fact:

Mr. Loehr began working for PDI on December 29, 2022. He worked full-time hours for the company as a warehouse generalist. Claimant last reported to work and performed his job on June 17, 2024. His employment with PDI ended on July 11, 2024 due to his incarceration.

On June 28, Mr. Loehr was arrested and charged with five criminal offenses in Dallas County. He did not make any contact with the employer to let them know he was incarcerated and would not be at work.

On Monday, July 1, the employer learned through public information that Mr. Loehr had been arrested. It did not know whether he remained incarcerated or how long he would be in jail. That same day – July 1 – PDI sent claimant a letter notifying him that he was suspended

pending the outcome of his criminal proceedings. (Exhibit 3) The letter also stated: "Per our policy you must report your arrest for charge with a drug related offense..." (Exhibit 3) This letter was mailed to claimant's home address in Ankeny.

On or before July 1, claimant's mother left the warehouse supervisor a voicemail message stating the claimant was in jail. This message did not include any information about the length of time claimant would be incarcerated. Claimant did not make contact with the employer the week of July 1, 2024. Because claimant did not contact the employer all week, the employer sent him a follow-up letter on July 8. (Exhibit 4) This letter stated:

We previously sent a letter of your suspension pending the outcome of the criminal proceedings. Since then we have not had any contact from you. We ask that you personally call us within the next three days to provide updates on your availability to return to work. If we don't hear from you in the next three business days, we will consider that a no show/no call and abide by our attendance policy.

The employer mailed this letter to claimant's home address in Ankeny. Claimant did not receive the letter because he was still incarcerated.

Claimant was released from the Dallas County Jail on July 25, 2024. He called Mortale in Human Resources that afternoon to explain why he had not been calling in the past several weeks. (Exhibits 5 and 6) Mortale did not return his call, as the employer considered him to have quit on July 11, 2024.

Claimant currently has five charges pending in Dallas County: two simple misdemeanors; two serious misdemeanors; and one scheduled violation. He is scheduled for a pre-trial conference on these charges on October 17, 2024. Claimant intends to go to trial on all five charges.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation is disqualifying. Benefits must be denied.

Iowa Code section 96.5(11) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. Incarceration – disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

- (1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.
- (2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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.

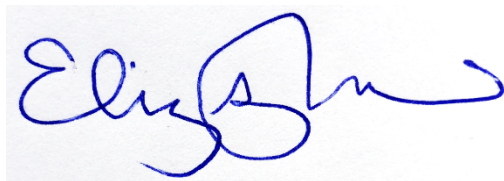
This evidence presented does clearly show whether claimant gave prior notice to the employer that he would be absent from work due to incarceration. The employer concedes that claimant's mother called and left a message for the warehouse supervisor stating the claimant was in jail. If this message was left prior to claimant's July 1 workday, ***and depending on the content of the message itself, it*** may be sufficient to notify the employer that claimant would not be at work due to his incarceration in Dallas County. The claimant did report back to the employer within two working days of his release to offer services. The employer never returned his call, effectively rejecting the offer of services.

Assuming claimant can meet the first, third,, and fourth elements of the four-part criteria, he still fails because he cannot establish the second element. Criminal charges related to his incarceration have been filed; they have not been dismissed; and he has not yet been to court to have the opportunity for a finding of "not guilty" on all criminal charges" related to the incarceration.

Accordingly, I find claimant's separation from employment was a disqualifying separation due to incarceration. Benefits must be withheld.

DECISION:

The August 19, 2024 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant separated from employment due to incarceration, and that separation is disqualifying. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

September 16, 2024
Decision Dated and Mailed

LJ/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.