

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ISIDRO MALDONADO
Claimant

AG PARTNERS LLC
Employer

APPEAL 19A-UI-00068-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.11 – Incarceration Disqualification
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the December 26, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2019. Claimant did not participate. Employer participated through Betty Swenson. Official notice was taken of the administrative record.

ISSUES:

Is the claimant disqualified from receiving unemployment benefits due to a separation from employment as the result of incarceration?

Has the claimant been overpaid benefits?

Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 12, 2018. Claimant last worked as a full-time grain attendant. Claimant was separated from employment on August 17, 2018, after he informed the employer he would need to take the next 60 days off work to serve a sentence for a criminal assault conviction. The employer's attendance policy only allows for three unexcused absences within a 12-month period. The claimant received a copy of this policy upon his hire. As claimant's absences due to incarceration would far exceed those allowed by the employer's policy, the claimant was discharged from employment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 9, 2018, but has not received any benefits to date. Both the employer and the

claimant participated in a fact finding interview regarding the separation on December 21, 2018. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation due to incarceration is disqualifying. Benefits are withheld.

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.

Under Iowa Code section 96.6(2) provides the claimant has the initial burden to produce evidence showing that he is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11. If it is shown the claimant became separated from employment due to his incarceration he must produce evidence on the whether the four conditions for avoiding incarceration disqualification are met. Here, the claimant cannot meet the requirement under Iowa Code §96.11(a)(2), as he was convicted of the criminal charges for which he was incarcerated. Accordingly, he is disqualified due to incarceration under Iowa Code §96.11. Benefits are denied. As the claimant has not received any benefits to date, the issues of overpayment and participation are moot.

DECISION:

The December 26, 2018, (reference 01) decision is reversed. The claimant's separation due to incarceration is disqualifying. 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 or is otherwise deemed eligible. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs