

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY A KNEBEL
Claimant

ATC INC
Employer

APPEAL 19A-UI-07699-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/08/19
Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5 – Disqualification - Incarceration
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

ATC (employer) appealed a representative's September 27, 2019, decision (reference 01) that concluded Gary Knebel (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 22, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Morgan Philipp, General Manager, and Brittany Philipp, Human Resources Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 1, 2019, as a full-time mechanic. He signed for receipt of the employer's handbook on May 1, 2019. The handbook states that if an employee does not appear for work for three days and does not notify the employer of his absence, the employee will be deemed to have voluntarily quit work.

After May 6, 2019, the claimant did not appear for work but his girlfriend called the employer on an unknown date to say the claimant was incarcerated. The claimant's mother and stepfather talked to the general manager on or about May 15, 2019. The general manager said he would consider holding a position open for the claimant.

While incarcerated the claimant was injured. He was released on or about May 21, 2019, and provided the employer with a May 27, 2019, doctor's note excusing him from work on May 28 and 29, 2019. On May 30, 2019, the doctor wrote the claimant a note stating the claimant could return to work with no restrictions on June 7, 2019. The claimant provided the note to the

employer. On June 14, 2019, the claimant's physician wrote a note indicating the claimant could return to light duty work on June 20, 2019. The claimant gave the note to the employer.

On June 21, 2019, the employer sent the claimant a letter of termination. The letter stated, "Due to your lifting and mobility restraints, you are physically unable to perform these takes (sic) and unfortunately, we do not have any light duty work available for you. At this time, your employment with ATC has been terminated."

The claimant filed for unemployment insurance benefits with an effective date of September 8, 2019. He received no unemployment insurance benefits after his separation from employment. The employer participated personally at the fact finding interview on September 23, 2019, by Brittany Philipp.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant was disqualified for unemployment insurance benefits based on his incarceration.

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.

Based upon the evidence provided, the claimant was incarcerated from May 6, 2019 to May 21, 2019. His girlfriend notified the employer of the absence on an unknown date. The status of the claimant's criminal charges is unknown. The claimant contacted the employer an unknown number of days after his release. There was no offer of work due to the claimant's medical condition. The claimant's separation was based on his incarceration. The claimant did not meet the requirements of the Iowa Code related to disqualification for incarceration. Therefore, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 27, 2019, decision (reference 01) is reversed. The claimant left work based on his incarceration. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn