

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL J BARBARY SR
Claimant

APPEAL NO. 10A-UI-09030-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 05/23/10
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Russell Barbary Sr., filed an appeal from a decision dated June 16, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 11, 2010. The claimant participated on his own behalf. The employer, HCM, participated by Director of Nursing Nancy Upmeyer.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Russell Barbary Sr. was employed by HCM from December 26, 2008 until May 21, 2010 as a full-time CNA. His last day of work was May 11, 2010, and he was incarcerated on May 12, 2010. He was no-call/no-show to work until the employer contacted one of his relatives on May 17, 2010, to find out why he was absent.

Mr. Barbary was released from jail on May 21, 2010, and contacted his employer. He met with DON Nancy Upmeyer and Administrator Casey Kann that afternoon. They told him he had been replaced because no one had any idea when he might be released from jail. He submitted a resignation.

REASONING AND CONCLUSIONS OF LAW:

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.

Under the provisions of the above Administrative Code section, the claimant's incarceration is a voluntary quit by operation of law. The voluntary quit was without good cause attributable to the employer and the claimant is disqualified.

DECISION:

The representative's decision of June 16, 2010, reference 01, is affirmed. Russell Barbary Sr. is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css