

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JAMES D CONWAY  
1216 FIRST ST NW  
MASON CITY IA 50401

SCHUKEI CHEVROLET INC  
P O BOX 1525  
MASON CITY IA 50402

Appeal Number: 04A-UI-10286-HT  
OC: 08/22/04 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Quit

STATEMENT OF THE CASE:

The claimant, James Conway, filed an appeal from a decision dated September 15, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 13, 2004. The claimant participated on his own behalf. The employer, Schukei Chevrolet, Inc. (Schukei), participated by Rental and Detail Manager Shani Brumm.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: James Conway was employed by Schukei from May 5, 2003 until August 18, 2004. He was a full-time detailer.

Mr. Conway provided a doctor's statement to Rental and Detail Manager Shani Brumm on August 10, 2004. It excused him from work and released him to return on August 13, 2004. Later that same day the claimant's girlfriend came in and spoke with Ms. Brumm to tell her that the claimant had been arrested in Fort Dodge, Iowa, for probation violation. The employer said the claimant was excused from work only until August 13, 2004, according to the doctor's note which had been provided.

The claimant remained incarcerated and did not contact the employer again until August 23, 2004. He had been to court that morning where he had been found guilty of contempt of court, then released. Mr. Conway called Ms. Brumm and asked if he still had a job. She told him he had been replaced since he had not kept in contact with the employer.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 resulted in him not being able to return to work and is considered a voluntary quit without good cause attributable to the employer. He is disqualified.

DECISION:

The representative's decision of September 15, 2004, reference 01, is affirmed. James Conway is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided h is otherwise eligible.

bgh/s