

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MITCH GRIMES

Claimant

APPEAL NO: 11A-UI-08193-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST PENN MANUFACTURING CO INC

Employer

OC: 05-22-11

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 16, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 14, 2011. The claimant participated in the hearing with his mother/witness Yvonne Davidson. Daniel Heydt, Plant Manager; Kurt Becker, Employee Relations Representative; and Dan St. Pierre, Foreperson, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time rawfill operator for East Penn Manufacturing from July 21, 2008 to May 20, 2011. The claimant acknowledged being incarcerated during scheduled workdays between May 2, 2011 and May 9, 2011. His mother called the employer May 2, 2011, and stated he would be absent due to being in jail until the following Monday, May 9, 2011. The employer's policy requires employees to call in everyday when they are absent but the claimant's mother was not aware of that policy and was not told she had to call everyday by the employer. The claimant returned to work May 10, 2011, and was notified May 11, 2011, that he was required to undergo a return to work physical and drug screen and could not work until the results of those were received by the employer. The drug test results were inconclusive and the sample was sent to another certified lab. The employer was notified the test results were positive but does not know for what substance. It decided to terminate the claimant's employment for job abandonment because he was in jail and his absences were not properly reported.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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 § 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 § 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). The claimant's incarceration on multiple scheduled workdays was not a good-cause reason attributable to the employer for leaving. The employer's attribution of the absences as a voluntary leaving of employment was reasonable as it is not expected to hold employment for incarcerated employees. While the employer may have handled the situation poorly by not telling the claimant's mother she needed to call in everyday, letting the claimant return to work, and sending him for a return to work physical and drug screen, before deciding he abandoned his job, under Iowa law, due to the incarceration, the employer may reasonably consider the absences, reported or unreported, (emphasis added) a voluntary leaving of employment without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The June 16, 2011, reference 01, decision is affirmed. The claimant voluntarily left left employment without good cause attributable to the employer. 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, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs