

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEL M BUTLER
Claimant

APPEAL NO. 09A-UI-14748-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREFERRED CARTAGE SVC INC
Employer

OC: 09/06/09
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Joel Butler filed a timely appeal from the September 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 29, 2009. Mr. Butler participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Mr. Butler separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joel Butler was employed by Preferred Cartage Service, Inc., as a full-time mechanic from August 2008 and most recently performed work for the employer on Friday, June 12, 2009. On that day, Mr. Butler was arrested and charged with multiple non-work-related criminal offenses. Mr. Butler remained incarcerated until he was released during the early morning hours of June 25, 2009. On June 25, 2009, Mr. Butler returned to the employer to offer his services. The employer had hired a replacement employee and no longer had work available for Mr. Butler.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of

laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Where a person separated from employment because he became incarcerated, the separation is deemed a voluntary quit and the quit is presumed to have been without good cause attributable to the employer. See 871 IAC 24.25(16).

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.

The evidence in the record indicates that Mr. Butler separated from the employment as a result of his 12-day incarceration. Under the applicable law cited above, the administrative law judge must conclude that Mr. Butler voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Butler is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Butler.

DECISION:

The Agency representatives September 29, 2009, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work

equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css