

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLIFFORD G FREEMAN
Claimant

ABM LTD
Employer

APPEAL 17A-UI-09588-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/27/17
Claimant: Appellant (5)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(11) – Separation Due to Incarceration

STATEMENT OF THE CASE:

Clifford G. Freeman (claimant) filed an appeal from the September 12, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with ABM, LTD (employer) when he failed to notify the employer or report to work for three days which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2017. The claimant participated personally. His girlfriend and former co-worker, Pamela Lanken, participated on his behalf as a witness, but she was not his representative. The employer participated through Human Resources Manager Gregg Stearns. Claimant's Exhibit A was received. Official notice was taken of Iowa Courts Online, specifically the information related to court case 05771 FECR304703 in Polk County.

ISSUE:

Was the claimant's separation disqualifying due to incarceration?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Custodian beginning on January 16, 2017, and his last day worked was April 6, 2017.

On April 8, 2017, the claimant was arrested and incarcerated. The claimant's next scheduled workday was April 9, 2017. Pamela Lanken, the claimant's girlfriend and then co-worker, notified their supervisor Hector Gonzalez before the shift on April 9 that the claimant would not be at work as he was incarcerated. On May 15, 2017, Human Resources Manager Gregg Stearns met with the claimant at the jail about client keys that the claimant had in his possession at the time of his arrest. During the conversation, Stearns indicated to the claimant that he would have a job when he was released from jail. The charges against the claimant were dismissed and he was released from jail on or about July 20, 2017. The claimant

contacted the employer at the beginning of August 2017 and requested to return to work. He was told at that time to reapply. He was then told that he failed the background check.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation due to incarceration was disqualifying. Benefits are denied.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense

and experience, the administrative law judge attributes more weight to the claimant's version of events.

Iowa employment law disqualifies claimants who are separated as a result of incarceration from receiving unemployment insurance benefits unless certain criteria are met. Iowa Code section 96.5(11). Both parties agree that the claimant's separation from employment was due to incarceration as the claimant did not tell the employer he was voluntarily leaving his employment and the employer did not notify him that he was discharged. The issue in this case is whether the claimant met the additional requirements. Lancken's notification to the employer that the claimant was incarcerated for an indefinite time is considered adequate notice of his absence and the criminal charges against the claimant were ultimately dismissed. However, the claimant failed to report back to the employer within two days of his release to offer his services which makes his separation due to incarceration disqualifying. Benefits are denied.

DECISION:

The September 12, 2017, reference 01, unemployment insurance decision is modified with no change in effect. The claimant's separation due to incarceration is disqualifying. 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn