

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAL P DENG
Claimant

APPEAL NO. 13A-UI-09882-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENNOX INDUSTRIES INC
Employer

OC: 08/04/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Wal Deng filed a timely appeal from the August 23, 2013, reference 01, decision that he was disqualified for benefits. After due notice was issued, a hearing was held on October 1, 2013. Mr. Deng participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether Mr. Deng 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: Wal Deng was employed by Lennox Industries, Inc., as a full-time welder from 2005 and last performed work for the employer on July 3, 2013. On July 4, 2013, Mr. Deng was arrested in Tama County and charged with an enhanced Operating While Intoxicated offense. Mr. Deng remained in custody until on or about July 23, 2013. On or about July 23, 2013, Mr. Deng contacted management at Lennox Industries and was directed to make contact with the union. As of this date, Mr. Deng has not returned to work at Lennox.

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.

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.

The evidence in the record indicates that Mr. Deng voluntarily quit without good cause attributable to the employer by becoming incarcerated on a criminal offense for a period of at least 19 days. Accordingly, Mr. Deng 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.

DECISION:

The agency representatives August 23, 2013, 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/pjs