

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA W LAWRENCE
Claimant

WALMART INC
Employer

APPEAL 19A-UI-03204-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/19
Claimant: Appellant (1)

Iowa Code § 96.11 – Incarceration Disqualification

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 11, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 21, 2019. Claimant participated personally and through his father, Richard Lawrence. Employer participated through co-manager Megan Harp and asset protection manager Mark Rader.

ISSUE:

Is the claimant disqualified from receiving unemployment insurance benefits because of a separation due to incarceration?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 22, 2015. Claimant last worked as a full-time personal shopper. Claimant was separated from employment on February 1, 2019, when he was incarcerated.

Employer has an arrest and convictions policy requiring employees to report an arrest or criminal charge to employer within three calendar days of the incident occurring. Employer may then suspend the employee without pay, for up to 12 months. If the charge is resolved favorably during those 12 months, employer may return the employee to work. Claimant was given an opportunity to review the policy.

On January 31, 2019, an officer with the Cedar Rapids Police Department contacted asset protection manager Mark Rader asking about claimant's work schedule. Claimant was arrested and charged with a crime the next day. Claimant was incarcerated for approximately one to two weeks.

On February 6, 2019, claimant's father, Richard Lawrence, informed employer his son would be absent from work going forward and asked about requesting a medical leave of absence on behalf of his son. After going back and forth, employer eventually told Richard Lawrence on

February 25, 2019, that it considered claimant suspended so there was no need to request a medical leave of absence.

The charge against claimant is still pending.

Claimant has not asked employer if he can return to work.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.26(17) provides:

Separation due to incarceration.

a. The claimant shall be eligible for benefits if the department finds that all of the following conditions have been met:

- (1) The employer was notified by the claimant prior to the 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 claimant was found not guilty of all criminal charges relating to the incarceration;
- (3) The claimant reported back to the employer within two work days of the release from incarceration and offered services to the employer; and
- (4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.26(17) "a"(1), the claimant shall be considered to have voluntarily quit the employment if the claimant was absent for three work days or more under subrule 24.25(4). If the absence was two days or less, the separation shall be considered a discharge under rule 871—24.32(96).

If all of the conditions of subparagraphs 24.26(17)"a"(2), (3) and (4) are not satisfied, the separation should be considered a discharge under rule 871—24.32(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

In this case, claimant was separated from employment due to the fact that he was incarcerated. Employer has not yet discharged claimant. But the statute does not say the evidence must show that the motive for discharging a claimant was that he had done something that caused his incarceration. Indeed, the law does not even say that the evidence must show the claimant was discharged. The claimant must only have been separated because of an incarceration, as he is currently in this case.

If the preponderance of the evidence shows that "but for" the incarceration the claimant would not have been separated from employment, then claimant will be disqualified from receiving benefits unless and until the four conditions for avoiding such a disqualification are all satisfied. Here, claimant has not met those conditions. Claimant did not notify employer prior to the absence from work. Criminal charges against claimant are still pending. Claimant has not reported back to work and employer has not rejected his attempt to do so.

In this case, claimant did not meet the requirements of the law cited above and therefore is disqualified from receiving unemployment insurance benefits based on this separation from employment due to incarceration.

DECISION:

The April 11, 2019, (reference 01) decision is affirmed. Claimant was separated from employment due to incarceration and is disqualified from receiving benefits. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn