

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM S PORTER
Claimant

APPEAL NO. 14A-UI-00337-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON PREPARED FOODS INC
Employer

OC: 03/10/13
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, William Porter, filed an appeal from a decision dated December 30, 2013, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 3, 2014. The claimant participated on his own behalf. The employer, Tyson, participated by Human Resources Manager Elena Reader.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

William Porter was employed by Tyson from August 19, 2013 until November 21, 2013 as a full-time maintenance mechanic. On November 19, 2013, he notified Human Resources Manager Elena Reader he was going to have to serve 14 days in jail. She recommended he resign so he would be eligible for rehire in six months. Otherwise he would accumulate too many attendance points because he did not have any paid time off to use. He already had two attendance points and with the absences during the incarceration, he would reach discharge level. The claimant took the recommendation and resigned.

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.

The claimant resigned rather than accumulate enough attendance points to be discharged. Incarceration is considered a voluntary quit by operation of law in any event. The claimant's resignation was not forced but given to him as an option so he could be rehired. The record establishes the claimant did not have good cause attributable to the employer for quitting and he is disqualified.

DECISION:

The unemployment insurance decision dated December 30, 2013, reference 04, is affirmed. William Porter is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css