

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAPRISHA R DAYE**

Claimant

**APPEAL NO: 10A-UI-08833-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**

Employer

**OC: 05/09/10**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(16) – Incarceration

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated June 10, 2010, reference 01, that held she voluntarily quit employment without good cause on April 28, 2010, and benefits are denied. A hearing was held in Des Moines, Iowa on August 3, 2010. The claimant participated. The employer did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began work for the employer in August 2008, and last worked as a full-time pre-school associate on April 27, 2010. The claimant was scheduled to work Monday through Friday.

The claimant was arrested on a drug charge on April 28 and taken to the Polk County jail. The claimant was incarcerated until her release about 2:00 p.m. on May 5. The claimant was unable to personally notify the employer of her reason for absence, so she had some relative-employees do so. After her release, the claimant received a letter from Human Resources that she was considered a voluntary quit from employment due to her arrest and failure to provide written notice to the employer in violation of a rule.

The employer failed to appear for the hearing.

**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 administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer effective April 28, 2010 due to her incarceration.

The department rule is that an incarceration constitutes a voluntary leaving of employment that is without good cause attributable to the employer. The employer protested claimant's claim on this basis and terminated her employment for the same reason. The claimant was absent from employment for more than three days of scheduled work without proper notice to the employer.

**DECISION:**

The department decision dated June 10, 2010, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to the employer effective April 28, 2010. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/css