

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN L MCATEE
Claimant

APPEAL NO: 10A-UI-16926-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HULCHER SERVICES INC
Employer

**OC: 11/07/10
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(4) – Job Abandonment
871 IAC 24.25(16) – Incarceration
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 3, 2010, reference 01, that held the claimant was not discharged for misconduct on July 23, 2010, and benefits are allowed. A telephone hearing was held on January 27, 2011. The claimant participated. Randy Cheers, Division Manager, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 7, 2010 as a full-time manager in training and last worked for the employer on July 23. The claimant received the employer policy that a failure to call-in and report for work for three consecutive days is job abandonment.

The claimant was charged with criminal assault on February 3, and he advised his employer about this incident. The employer advised he needed to take care of it. The claimant pled guilty and advised his employer he was put on probation for one year with a requirement he meet on a periodic basis with a probation officer. The employer accommodated claimant to take time off to attend both probation and counseling meetings.

The claimant missed and re-scheduled probation meetings to the point it became an issue. When the claimant went home after work on July 23, there was a written notice revoking his probation with a direction he report to jail on July 26. The claimant served a jail sentence until his release on the morning of August 4. The claimant did speak with his manager on July 26 that he would be off work to take care of personal business. The claimant did not call or report to work until after jail release.

The claimant attempted to go back to work, but the employer resisted. About a week after his release, an HR representative advised claimant he was terminated due to job abandonment based on his failure to call in and report for work during his jail sentence.

The claimant has claimed for and received benefits on his unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 § 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 § 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 the claimant voluntarily quit without good cause attributable to his employer due to his incarceration with corresponding job abandonment effective July 23, 2010.

The law provides that an incarceration is a voluntary employment separation without good cause. It was claimant's responsibility to satisfy his probation conditions, not his employer. The employment separation is due to the probation revocation, incarceration and the claimant's inability to call and report for work for three days in violation of the employer policy.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant is disqualified by reason of this decision, the overpayment issue is remanded to claims for an investigation and decision.

DECISION:

The department decision dated December 3, 2010, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to his employer effective October 23, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded to claims.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs