

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN BARKER**  
Claimant

**APPEAL NO: 07A-UI-00767-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MILLARD REFRIGERATED SERVICES INC**  
Employer

**OC: 12-17-06 R: 04  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 11, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 6, 2007. The claimant participated in the hearing. Todd Rogers, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouse worker for Millard Refrigerated Services from January 3, 2006 to December 17, 2006. The claimant acknowledged being incarcerated during at least two weeks of his final scheduled workdays. Due to the incarceration, the employer may reasonably consider the absences, reported or unreported, a voluntary leaving of employment without good cause attributable to the employer and on approximately December 17, 2006, the employer sent the claimant a letter indicating it could no longer hold his job.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2) (amended 1998). The claimant's incarceration on multiple scheduled workdays was not a good-cause reason attributable to the employer for leaving. The employer's attribution of the absences as a voluntary leaving of employment was reasonable as it is not expected to hold employment for incarcerated employees. Therefore, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The January 11, 2007, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant is overpaid benefits in the amount of \$1,182.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs