

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENROY L CLACKEN

Claimant

WALMART INC

Employer

APPEAL 19A-UI-08125-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19

Claimant: Appellant (1)

Iowa Code § 96.5(11) – Incarceration

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the October 14, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 1, 2019, at 10:00 a.m. Claimant participated. Employer participated through Kimberly Parrish, Human Resources People Lead. No exhibits were admitted.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

Whether claimant's separation is disqualifying due to incarceration.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time CAP II Associate from September 17, 2019 until his employment with Walmart Inc. ended on September 4, 2019. (Claimant Testimony)

On September 2, 2019, claimant was arrested for the criminal offense of driving while barred while on his way to work. (Claimant Testimony) Claimant was not able to notify employer that he would be absent from work prior to his arrest and incarceration. (Claimant Testimony) Claimant was in jail from September 2, 2019 until September 3, 2019. (Claimant Testimony) When claimant was released from jail on September 3, 2019, he checked his work schedule on employer's cellular telephone application. (Claimant Testimony) Claimant's schedule was blank; the application listed claimant's status as "terminated." (Claimant Testimony) Claimant immediately called employer to inquire about what he read on the application. (Claimant Testimony) An unknown employee told claimant not to come to work because he was terminated due to violation of the attendance policy for being absent from work without notice on September 2, 2019. (Claimant Testimony) The criminal charge for driving while barred was dismissed. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation is disqualifying.

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.

Claimant became separated from his employment due to his incarceration on September 2, 2019. The criminal charges related to claimant's incarceration were dismissed. Claimant reported back to the employer within two work days of release to offer services; employer rejected the offer of services. However, claimant did not give prior notice to employer that he would be absent from work due to incarceration. Because one of the requirements of subparagraph a was not met, and the law requires that all the terms of all four subparagraphs be met, the separation due to incarceration is disqualifying. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

DECISION:

The October 14, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant's separation due to incarceration is disqualifying. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn