

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SCOTT A STEPHENS
Claimant

APPEAL NO. 18A-UI-00944-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JS JONES INC
Employer

OC: 12/24/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Scott A. Stephens, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated January 17, 2018, reference 04, which denied unemployment insurance benefits, finding the claimant quit work on January 2, 2018, by refusing to continue working. After due notice was provided, a telephone hearing was held on February 14, 2018. Claimant participated. The employer participated by Mr. Jim Jones, President, and witness Mr. Ryan Aryanholz, Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Scott Stephens was employed by J.S. Jones, Inc. as a full-time construction site installer from April 10, 2017, until January 2, 2018 when he stopped reporting to work because he was incarcerated. Mr. Stephens was paid by the hour and his immediate supervisor was Ryan Aryanholz.

During December 2017, the employer had not laid Mr. Stephens off for the season. The company continued to employ workers on construction sites as weather permitted on a day-by-day basis. Weather might prevent some days, but allow work others. The company worked each day that weather permitted.

There was no work for the claimant on Monday, December 25, 2017, because it was a holiday and weather prevented work through Thursday, December 28, 2017.

On Thursday, December 28, 2017, Mr. Stephens was arrested for OWI while driving a company truck. The employer was notified on that day by law enforcement that the claimant had been arrested and incarcerated. Mr. Stephens telephoned his supervisor to ask for bail money. Mr. Aryanholz declined.

Because weather conditions the following day improved, the company called employees back to construction sites. Mr. Stephens did not report because he was incarcerated. The employer sent Mr. Stephens a letter the following week confirming that his employment had ended because he was in jail and not reporting for work. The employment relationship between the parties would end based upon his failure to respond to the recall to work. Mr. Stephens did not report to work because he was in jail and remained incarcerated for three additional weeks. Based upon the information that was acquired by the employer after the claimant's job separation, the employer believed that the claimant had taken a check and tools from the company, and that he had charged material to the company for his own use without authorization.

It is the claimant's position that he was laid off the day he was arrested and incarcerated on December 28, 2017. Mr. Stephens asserts that he had chosen to remain in jail for an additional three weeks after December 28, 2017 because, his supervisor told him there would be no work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

The claimant has the burden of proving that the voluntary leave was for a good-cause reason attributable to the employer. See Iowa Code section 96.6(2).

The claimant's incarceration on multiple scheduled work days was not a good cause reason attributable to the employer. The employer's attribution of the absences as voluntarily leaving the employment was reasonable as it is not expected to hold employment for incarcerated employees. Benefits are denied.

DECISION:

The representative's decision dated January 17, 2018, reference 04, is affirmed. The claimant quit employment without good cause attributable to the employer. Benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs