

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HENRY N BALLARD
Claimant

APPEAL NO: 18A-UI-10560-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAKER'S PRIDE INC
Employer

**OC: 09/30/18
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(11) – Incarceration Disqualification

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 18, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 6, 2018. The claimant participated personally. Deeta Dvorak, assisted the claimant by reading documents into the record. The employer participated through Christie Johnson, unemployment claims specialist. Richard McCoy, director of operations, also testified. The parties waived notice on the issue of whether the claimant's separation due to incarceration may be disqualifying.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits 1-20 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified from receiving unemployment insurance benefits due to a separation from employment as the result of incarceration?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production worker and was separated from employment on August 21, 2018.

On July 6, 2018, the claimant was arrested and charged with willful injury, a class C felony. He was released thereafter. The claimant last performed work on August 9, 2018. The claimant was then arrested and incarcerated on August 10, 2018, as a result of the charges and warrant for his arrest. He knew he would have a court appearance on August 13, 2018, which may result in him remaining in jail. He called the employer and spoke to a foreman named Larry before his court appearance. Larry told the claimant to talk to Rich about his job. The claimant

did not follow up with Rich. On August 14, 2018, the claimant's girlfriend called the employer and reported the claimant would not be at work. On August 15, 2018, the employer received a message that the claimant was in jail. It is unclear who the message was from. Neither the claimant nor a friend or family member made contact again with the employer after August 15, 2018 until September 24, 2018. After the claimant was released from jail, he followed up with Rich and was not permitted to return to his position.

The claimant remained in jail from August 10, 2018 through September 24, 2018, in connection with the arrest for willful injury. Criminal charges have been filed as a result of the arrest and the charges are still pending. The charges have not been dismissed and the claimant's guilt has not yet been determined. He is scheduled for a jury trial on November 27, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation due to incarceration is disqualifying. Benefits are denied.

Iowa Code section 96.5(11)a 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 decision in this case rests, in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The parties agree the claimant's employment ended as a result of his incarceration. This is disqualifying unless he can meet all of the criteria outlined above. The claimant did not notify the employer upon learning that he was likely going to be incarcerated and that he would not be available until after he had been incarcerated. The claimant waited until after he was incarcerated to notify the employer.

His girlfriend called the employer after he was not released as hoped on August 14, 2018 and possibly again on August 15, 2018. However, no one updated the employer of the claimant's whereabouts or plans from the period of August 16, 2018 until September 24, 2018. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. A lapse of communication for over five weeks is not reasonable; in light of the last communication with the employer being the claimant was simply in jail, with no details of possible release or other information.

The claimant's claim fails on the first and second elements. The claimant did not make the employer aware of the potential incarceration until after he was jailed, in light of knowing it was possible in July. The claimant waited until after he was in jail to notify the employer and did not follow the employer's directive that he speak to Rich about the absence. Neither the claimant nor his girlfriend (or anyone) followed up with Rich until September 24, 2018, when the claimant was released.

Criminal charges were filed as a result of the arrest and they have not yet been dismissed nor has he been found not guilty.

Based on the evidence presented, the administrative law judge concludes the claimant's separation due to incarceration is disqualifying. Accordingly, benefits are denied.

DECISION:

The October 18, 2018, (reference 01) decision is modified with no change in effect. The claimant's separation due to incarceration is disqualifying. 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn