

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD J LINCOLN
Claimant

APPEAL NO. 17A-UI-08386-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYMENT LOGISTICS INC
Employer

OC: 07/09/17
Claimant: Appellant (5)

Iowa Code Section 96.5(11) – Incarceration Disqualification

STATEMENT OF THE CASE:

Richard Lincoln filed a timely appeal from the August 9, 2017, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Lincoln voluntarily quit the employment on December 31, 2016 for personal reasons and without good cause attributable to the employer. After due notice was issued, a hearing was held on September 5, 2017. Mr. Lincoln participated. Eva Cuevas, Compliance Manager, represented the employer.

ISSUE:

Whether Mr. Lincoln separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard Lincoln was employed by Employment Logistics as a part-time passenger van driver. Mr. Lincoln began the employment in August 2016 and last performed work for the employer on December 31, 2016. Mr. Lincoln worked from 3:00 a.m. to 7:00 a.m. and from 3:00 p.m. to 7:00 p.m. three days one week and four days the next for a total weekly work hours that alternated between 24 and 32. Mr. Lincoln had another concurrent full-time employment that provided 36 to 48 hours per week.

In 2004, Mr. Lincoln was convicted of a federal offense, possession of a controlled substance with intent to deliver, and was sentenced to federal prison. In 2015, Mr. Lincoln was released from federal prison to a residential re-entry center. Mr. Lincoln was released from the residential re-entry center in May 2016, but continued on probation during the period of his employment at Employment Logistics.

On January 3, 2017, Mr. Lincoln notified his supervisor, Brock Reather, Logistics Supervisor, that he had received a mailed notice to appear for a probation revocation proceeding on January 5, 2017. Mr. Lincoln told Mr. Brock that the federal government was recommending that Mr. Lincoln be returned to prison for six months. Mr. Lincoln told Mr. Reather that if the

employer had not heard from him by 3:00 p.m., that meant that Mr. Lincoln had been sentenced to prison and taken into custody. Mr. Lincoln told Mr. Reather that if by chance he was not sentenced to return to prison, he would continue in the employment. Mr. Reather wished Mr. Lincoln well and invited him to contact the employer when he was released from custody. On January 5, 2017, a federal judge found Mr. Lincoln to be in violation of the conditions of his probation due to Mr. Lincoln associating with a felon and lying to his probation officer. At the time of the probation revocation hearing, Mr. Lincoln was taken into custody. Mr. Lincoln was subsequently transported to a federal prison in Rochester, Minnesota. Mr. Lincoln remained in prison until July 3, 2017, when he was released to the Gerald R. Hinzman Center, a residential re-entry center in Cedar Rapids. Mr. Lincoln's commitment to the Hinzman Center continued at the time of the September 5, 2017 unemployment insurance appeal hearing. As a condition of his commitment to the Hinzman Center, Mr. Lincoln is not allowed to transport other people committed to the Hinzman Center. Because Mr. Lincoln's driving duties at Employment Logistics included transporting people committed to the Hinzman Center, Mr. Lincoln has not contacted the employer to request return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The law regarding separations due to incarcerations has undergone substantial changes during the last 13 months. Prior to the Iowa Supreme Court's decision in *Irving v. Employment Appeal Board*, 883 N.W.2d 179 (Iowa 2016), Iowa Workforce Development would presume an employee who left employment due to incarceration to have voluntarily quit the employment without good cause attributable to the employer. See Iowa Code section 96.5(1) and Iowa Administrative Code rule 871-24.25(16). In *Irving*, the Supreme Court concluded "that incarceration in and [of] itself does not establish a voluntary quit. Instead, the circumstances that led to the incarceration must establish volitional acts of a nature sufficient to allow a fact

finder to draw the conclusion that the employee by his intentional acts has purposely set in motion a chain of events leading to incarceration, absence from work and ultimate termination from employment.” *Irving* at 209. Elsewhere in the decision, the Court considered whether absences due to incarceration could be deemed volitional and, therefore, unexcused absences for determining eligibility for unemployment insurance benefits. *Irving* at 201-203. The Court stated:

We recognize that in some instances, conduct leading to incarceration may be so egregious and incarceration interfering with employment so predictable that an employer may establish willful or wanton disregard of its interests. We further recognize that failure to inform the employer of the incarceration, particularly over extended periods of time, may amount to misconduct.

Irving at 202. The Court added:

We further find that involuntary incarceration, at least where the charges are dismissed, also falls within the “other reasonable grounds” for absence contemplated under rule 871-24.32(7). Like illness, absences due to incarceration are involuntary.

Irving at 203.

In response to *Irving*, the Iowa Legislature enacted Iowa Code section 96.5(11) as part of the 2017 legislative session. The statute took effect on July 2, 2017, and is, for now, the law of the land. The statute moves separations due to incarceration outside the voluntary quit/discharge analysis and creates a completely new category of separation and basis for disqualification as follows:

96.5 Causes for disqualification.

An individual shall be disqualified for benefits:

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 been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

When the separation from employment is based on incarceration, the claimant has the burden of proving the claimant is not disqualified for benefits under Iowa Code section 96.5(11). Iowa Code section 96.6(2).

At the same time the Legislature enacted Iowa Code section 96.5(11), it also enacted Iowa Code section 96.5(12), which limits the scope of the disqualification in connection with voluntary quits and discharges from part-time employment. By omitting the reference to incarceration in Iowa Code section 96.5(12), the Legislature made the disqualification based on incarceration a full disqualification for benefits, without regard to whether the employment was part-time supplemental.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Lincoln's separation was not a voluntary quit, but a separation due to incarceration. Mr. Lincoln had already been convicted of an underlying federal offense before he started the employment. Mr. Lincoln remained on probation during the period of the employment. On January 5, 2017, a federal judge found Mr. Lincoln to be in violation of the conditions of his probation and sentenced Mr. Lincoln to six months of prison followed by time in a half-way house. Mr. Lincoln is still in the half-way house. For all these reasons, Mr. Lincoln does not satisfy the requirements of Iowa Code section 96.5(11) and, therefore, is disqualified for unemployment insurance benefits in connection with his January 5, 2017 separation from Employment Logistics. Mr. Lincoln is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Lincoln must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The August 9, 2017, reference 03, decision is modified as follows. The claimant separated from the employment due to incarceration. The effective separation date was January 5, 2017, not December 31, 2016. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs