

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 17, 2004, as a full-time temporary laborer assigned to work at Winegard. The claimant's last day of work was May 26, 2005. On or about May 26, 2005, the claimant was arrested and incarcerated for failure to appear in court. He was released from jail on or about June 26, 2005. The employer assumed the claimant quit work because he did not notify the employer of his absence. Continued work was available for the claimant had he appeared for work every day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped appearing for work. When an employee stops appearing for work because he is incarcerated, his leaving is without good cause attributable to the employer. The claimant stopped appearing for work because he was incarcerated. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The second issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(12) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(12) If a claimant is in jail or prison, such claimant is not available for work.

When an employee is incarcerated and unable to perform work due to that incarceration, he is considered to be unavailable for work. The claimant was incarcerated from approximately May 26 to June 26, 2005. He is considered to be unavailable for work during that time. The claimant is disqualified from receiving unemployment insurance benefits during that time, due to his unavailability for work.

DECISION:

The representative's August 23, 2005 decision (reference 03) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. In addition, the claimant is disqualified from receiving unemployment insurance benefits because he was not available for work.

bas/kjw