

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

OSCAR L JEFFRIES  
421 AVE D  
FORT MADISON IA 52627-3061

REMEDY TEMPORARY SERVICES INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-6864

Appeal Number: 06A-UI-04372-S2T  
OC: 03/19/06 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit  
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Oscar Jeffries (claimant) appealed a representative's April 20, 2006 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Remedy Temporary Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 9, 2006. The claimant participated personally. The employer participated by Maria Dominquez, Branch Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 11, 2005, as a full-time temporary line worker assigned to Scott's. The claimant's last day of work was February 12, 2006. On February 13, 2006, the claimant was arrested and incarcerated. The claimant's girlfriend notified the employer of the situation. The employer told the girlfriend that the employer would consider the claimant to have quit but he could reapply for work after his release. He was released from jail on March 13, 2006. Continued work was available for the claimant had he appeared for work everyday.

#### 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 February 13 to March 13, 2006. He is considered to be unavailable for work during that period. The claimant is disqualified from receiving unemployment insurance benefits beginning February 13, 2006, due to his unavailability for work.

DECISION:

The representative's April 20, 2006 decision (reference 02) 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/kkf