

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT L REED
Claimant

BOWE MACHINE CO
Employer

APPEAL 17A-UI-08055-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/25/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 2, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2017. The claimant participated personally. Shannon Grove also testified for the claimant. The employer participated through John Ahlers, plant manager.

The administrative law judge took official notice of the administrative records including the fact-finding documents. 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.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 controller and was separated from employment on June 16, 2017, when he became incarcerated.

The claimant pled guilty to a 2012 charge of domestic violence involving his ex-wife. As part of his conviction, he was expected to complete “battery education classes” and report to court as directed. He did not and as a result, a bench warrant was issued for his arrest. The claimant had a court appearance on June 16, 2017 in response to his failure to appear to other court proceedings involving the domestic violence conviction. Consequently, he was taken into custody for a period of ten days.

On June 16, 2017, the claimant's girlfriend, Shannon Grove, called the employer and reported his absence due to incarceration, to John Ahlers, plant manager, in advance of the claimant's shift. Ms. Grove stated she also left messages on June 19 and 22, 2017 for Mr. Ahlers to update him of the claimant's status. Upon release from jail on June 26, 2017, the claimant immediately called his employer and met for a meeting, at which time he was informed separation had occurred as result of the claimant missing six consecutive days of work (June 16, 19, 20, 21, 22 and 23) while incarcerated.

The employer has a handbook which the claimant received but acknowledged he did not fully read. Contained within the handbook are provisions that three consecutive no call/no shows will result in separation, as well as that incarceration is not an excused absence. The employer designates point values for absences and the claimant's six absences each warranted nine attendance points, resulting in 54 points. An employee can be separated upon receipt of 51 points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

In this case, claimant was separated from employment because of his incarceration beginning June 16, 2017. Iowa Admin. Code r. 871-24.25(16) presumed that an individual who does not report to the employment because of incarceration had quit without good cause attributable to the employer. The Iowa Supreme Court in *Irving v. Emp't Appeal Bd.*, No. 15-0104, 2016 WL 3125854 (Iowa, June 3, 2016) invalidated that regulation. Under *Irving*, the employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, No. 15-0104, 2016 WL 3125854 (Iowa June 3, 2016). The claimant then has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). If the leaving was not voluntary, then there is no analysis into whether or not the employee left with good cause attributable to the employer because the case must be analyzed as a discharge. *Id.* (citing *Ames v. Emp't Appeal Bd.*, 439 N.W.2d 669, 673-74 (Iowa 1989)(employees refusing to go to work and cross union picket line due to the risk of violence associated with crossing the picket line was not a voluntary quitting of employment)).

Thus, the question here is whether claimant's separation from employment was voluntary. The term "voluntary" requires volition and generally means a desire to quit the job. *Id.* (citing *Bartelt v. Emp't Appeal Bd.*, 494 N.W.2d 684, 686 (Iowa 1993); *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Cook*, 299 N.W.2d at 701 (Iowa 1986); *Moulton v. Iowa Emp't Sec. Comm'n*, 34 N.W.2d 211, 213 (1948)). There must be substantial evidence to show that claimant's absence from work was voluntary. Incarceration, in and of itself, can never be considered volitional or voluntary. However, predicate acts that lead to incarceration can rise to level of conduct which would disqualify a claimant from receiving benefits. *Id.* Those predicate acts, however, must be volitional and must lead to an absence from the workplace which results in a loss of employment. *Id.* Further, 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 or her intentional acts, has purposively set in motion a chain of events leading to incarceration, absence from work, and ultimate separation from employment. *Id.* Lastly, if an employee fails to notify the employer of the status of his or her incarceration, or engages in deception regarding the incarceration, that may result in a voluntary quit or disqualifying misconduct. *Id.* It must also be analyzed whether or not the employee was capable of notifying the employer of the status of the incarceration and what steps the employee took to notify the employer.

The claimant pled guilty to domestic violence charges, did not appear as requested for court, and did not complete his court ordered training. Here, the claimant took actions that could have reasonably been foreseen to result in incarceration, and ultimately have an adverse impact upon his employment. As a result, his separation from employment was voluntary. Even though he attempted to notify the employer of his incarceration as soon as possible (through Ms. Grove), his incarceration on multiple scheduled workdays was not a good-cause reason for the separation attributable to the employer. Employer is not expected to hold employment for employees incarcerated for volitional acts.

Claimant has failed to establish his separation was with good cause attributable to employer. Thus, benefits must be denied.

DECISION:

The August 2, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. 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