

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE M GRIFFIN
Claimant

APPEAL 19A-UI-07230-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOVE'S TRAVEL STOPS AND COUNTRY S
Employer

OC: 08/11/19
Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(11) - Incarceration Disqualification

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 9, 2019 (reference 03) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 3, 2019. The claimant, Jamie M. Griffin, participated personally. The employer, Love's Travel Stops and Country S, participated through witnesses Janece Uhlenhopp and Michael Peterson. Both parties waived due notice of the issue regarding disqualification due to incarceration under Iowa Code § 96.5(11).

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the claimant's separation disqualifying due to incarceration?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as cashier and cook. She began working for this employer on April 25, 2019. Her immediate supervisor Janece Uhlenhopp.

On July 23, 2019, claimant was arrested and incarcerated. She posted bond and was released on August 1, 2019. Claimant asked Amy Baron to tell her supervisor that she would not be in to work due to her incarceration, which she did. When the claimant was no longer incarcerated, Amy Baron, who was not a supervisor to the claimant, told her that she no longer had a job. Claimant did not return to the employer to inquire about her employment status. Claimant's charges are pending at this time and she has pled not guilty.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.

Iowa Code section 96.5(11) 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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case, the claimant failed to return to the employer to offer her services within two days of her release pursuant to Iowa Code § 96.5(11). Her reliance on a co-worker's statement that she was discharged was not reasonable since Ms. Baron was not a supervisor to the claimant. As such, claimant's separation is disqualifying due to incarceration. Benefits must be denied.

DECISION:

The September 9, 2019 (reference 03) unemployment insurance decision is modified with no change in effect. Claimant's separation is disqualifying due to incarceration. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs