

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS P BREHENY
Claimant

APPEAL NO. 11A-UI-00437-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN EQUITY INVEST LIFE INS CO
Employer

**OC: 12/12/10
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(16) – Incarceration

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 7, 2011, reference 01, that held he voluntarily quit without good cause attributable to his employer on December 16, 2010, and that denied benefits. A telephone hearing was held on February 17, 2011. The claimant; his attorney, John Spellman; and mother, Wendy Breheney, participated. The employer did not participate.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began work as a temporary employee on April 27, 2009, and became full-time in May 2010. He last worked for the employer on December 8, 2010. His usual work schedule was Monday through Friday, 8:00 a.m. to 4:45 p.m.

The claimant learned law enforcement had a warrant for his arrest on December 8. He notified his supervisor about it on that date with notice he might be absent from work. The claimant was incarcerated on December 9 in the Polk County jail, and remained there until his release about 2:00 p.m. on Tuesday, December 14. Claimant's mother works for the employer and she advised that her son was in jail. When claimant was released, he contacted his supervisor about coming in to work, and he was told not to do so.

When claimant came to work on December 15, he was notified by the HR department that he had been placed on paid suspension, told to go home, and the employer would notify him about his further employment status. On December 16, an HR representative advised claimant he was terminated for being a three-day no-call, no-show to work.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer due to incarceration on December 9, 2010.

The employment separation on December 9 was due to the incarceration, and by department rule it is considered as a voluntary quit without good cause. Although the employer terminated claimant for a different reason (no-call, no-show), the underlying basis for it (incarceration) is disqualifying. The claimant was absent from work for almost four days (December 9, 10, 13, and 14) due to the incarceration, which further exacerbates the without-good-cause absenteeism.

DECISION:

The department decision dated January 7, 2011, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to his employer on December 9, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw