

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA M JOHNSON
Claimant

APPEAL NO. 10A-UCFE-00018-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEPARTMENT OF ARMY
Employer

OC: 03/21/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 11, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 28, 2010, in Davenport, Iowa. Claimant participated. The claimant was represented by John Moeller, attorney at law. Brandi Keegan was a witness on behalf of the claimant. The employer did not appear for the hearing. The record consists of the testimony of Samantha Johnson; the testimony of Brandi Keegan; and Claimant's Exhibits A-D.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a contract specialist by the TACOM Command, a part of the United States Department of Army. Her workplace was located on the Rock Island Arsenal in Rock Island, Illinois.

On March 11, 2010, the claimant was at work when her former fiancée called her and asked to speak to her at her home. The claimant received permission to leave for the day. When she got home, law enforcement arrived to arrest her former fiancée. A search of her home led to the discovery of drugs and drug paraphernalia. The claimant was arrested and incarcerated at the Scott County jail. The claimant was unable to come to work on March 12, 2010; March 15, 2010; March 16, 2010; and March 17, 2010. The claimant was released from jail on bond on March 18, 2010. She did not go to work that day.

The claimant received a certified letter dated March 17, 2010, indicating that she had been terminated. The claimant was considered by her employer to have been AWOL for the dates of March 15, 2010; March 16, 2010; and March 17, 2010. The claimant did not personally contact her employer while she was incarcerated. She could not make a collect call from jail to her

employer. The claimant asked her sister, Brandi Keegan, to call her employer. Ms. Keegan did so and told the employer that her sister would be unable to come to work due to personal issues.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case is uncontroverted that the claimant was incarcerated and unable to come to work on March 15, 2010; March 16, 2010; and March 17, 2010. Iowa law states that if an individual is unable to come to work due to incarceration, that the employee is considered to have voluntarily quit her job without good cause attributable to the employer. The administrative law judge understands that the claimant had pled not guilty to the charges and that every attempt was made on her part to get her bond reduced so that she could be released. However, the claimant still was absent from work due to incarceration, even though the employer may have been notified about the claimant's absence by her sister. Benefits must be denied.

DECISION:

The decision of the representative dated May 11, 2010, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs