

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL B LUDDINGTON
Claimant

APPEAL NO. 08A-UI-01152-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS INC
Employer

OC: 01/13/08 R: 03
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Luddington filed an appeal from a decision of a representative dated February 1, 2008, reference 01, which denied benefits based upon his separation from Wellman Dynamics, Inc. After due notice was issued, a hearing was held by telephone on February 18, 2008. Mr. Luddington participated personally. Participating as a witness was Dave Danielson, Chief Jailer. The employer participated by Dorothy Hays, Hearing Representative, and witnesses, Amy Reed and Ms. Kris Silver.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from April 18, 2005 until December 20, 2007. Mr. Luddington was employed full time and was paid by the hour.

The claimant's separation from employment occurred after the claimant was incarcerated on December 19, 2007 for an outstanding warrant. The claimant was incarcerated until January 3, 2008 and did not provide direct notification to the employer of his impending absence or report in daily as required. After the claimant failed to report or provide notification for several work days, the employer reasonably concluded the claimant had abandoned his job with the company.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant abandoned his position with the captioned employer by failing to report for scheduled work for several consecutive work days without providing direct notice to the employer as required. The claimant had not been authorized to be away from work and did not provide daily notification.

Mr. Luddington failed to report as he had been incarcerated for an outstanding warrant. The claimant was incarcerated for a substantial period of time and unable to report for work.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant is deemed to have left his employment due to incarceration under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 1, 2008, reference 01, is hereby affirmed. The claimant is deemed to have left employment due to incarceration under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs