

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUSSELL J BARBARY**  
Claimant

**APPEAL NO: 12A-UI-00310-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HCM INC**  
Employer

**OC: 11/27/11  
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 5, 2012, reference 01, that held he voluntarily quit without good cause attributable to his employer on October 21, 2011, and benefits are denied. A telephone hearing was held on February 7, 2012. The claimant 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 worked for the employer as a full-time C.N.A. from December 2, 2010 to October 21, 2011. He was arrested and incarcerated by local law enforcement during the early morning hours of October 22. He informed his employer about his arrest. He was charged with assault and violation of a no contact order. He was kept in jail until his release on November 23. Upon release from jail, he contacted his employer about going back to work only to learn that he had been replaced.

The employer failed to respond to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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 § 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 § 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 October 22, 2011.

The department rule considers an incarceration that causes an employment separation as a voluntary quit without good cause attributable to the record.

**DECISION:**

The department decision dated January 5, 2012, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to his employer on October 22, 2011. 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 the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs