

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLEN TYLER
Claimant

HY-VEE INC
Employer

APPEAL 23A-UI-12228-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/26/23
Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Allen Tyler, filed an appeal from the December 19, 2023, (reference 01) unemployment insurance decision that denied benefits effective November 27, 2023, based on the rationale that he did not report to work for three consecutive days and did not notify his employer of the reason. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2024, at 8:00 a.m. The claimant participated and testified. The employer participated through Human Resources Manager Connie Heidemann. Official notice was taken of the administrative records and Iowa Courts Online entries for the claimant's incarceration details.

The hearing notice displayed the overpayment issue in error. The claimant has not received benefits after this separation and this is a claimant appeal.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed with the employer as a full-time custodian from November July 24, 2023, until he was separated from employment on November 27, 2023, when he quit.

The employer has an employee handbook. The employee handbook states that if an employee does not report to work and does not inform the employer within three consecutive working days then they are to be considered to have voluntarily quit employment. The claimant was aware of the rule.

The claimant was arrested on November 22, 2023. The claimant was informed there was a warrant for his arrest for unpaid child support. The claimant was also charged with domestic

abuse assault causing injury or mental illness under Iowa Code 708.2A.¹ That same day, the claimant's sister called the employer and spoke with Assistant Plant Manager Clay Howard. His sister told Mr. Howard that the claimant would not be in for work that day due to a family emergency. She did not mention any specifics regarding the claimant's incarceration.

On November 27, 2023, the claimant was released from jail. That same day, Ms. Heidemann reasoned the claimant quit because he did not report to work or inform the employer the reason within three consecutive days which is considered a voluntary quit per its rule.

The claimant's domestic violence charge is still pending. The claimant will attend a hearing for this criminal count on January 18, 2024.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's separation due to incarceration is disqualifying. Benefits are withheld.

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.
[Emphasis added]

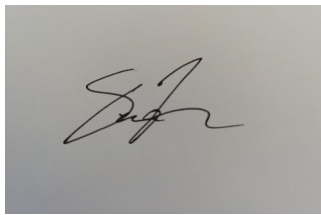
Under Iowa Code section 96.6(2) states the claimant has the initial burden to produce evidence showing that he is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11. If it is shown the claimant became separated from employment due to his incarceration he must produce evidence on whether the four conditions for avoiding incarceration disqualification are met.

¹ This information is visible on Iowa Courts Online. The case number is 06571 FECR152384 (Linn).

The claimant cannot satisfy the first element because the employer was not informed of his incarceration prior to his absence. It was merely informed that he would be absent, which is not enough. The claimant cannot satisfy the second element because the charge of domestic violence has not been resolved. The claimant acknowledged on the record that he had a hearing regarding this charge on January 18, 2024. See Iowa Code section 96.5(11)(2). All elements must be met for the claimant to be eligible for benefits. As a result, the claimant is disqualified from receiving benefits.

DECISION:

The December 19, 2023, (reference 01) decision is MODIFIED WITH NO CHANGE IN EFFECT. The claimant's separation on November 27, 2023 due to incarceration is disqualifying. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount or is otherwise deemed eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is centered within a light gray rectangular box.

Sean M. Nelson
Administrative Law Judge II

January 24, 2024
Decision Dated and Mailed

SMN/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.