

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM E LANE
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 21A-UI-08626-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/21
Claimant: Appellant (5)**

Iowa Code Section 96.5(11) – Separation Due to Incarceration
Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 24, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that the claimant voluntarily quit on January 31, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 9, 2021. The claimant participated. The employer registered a telephone number for the hearing, but was not available at the number at the time of the hearing and did not participate. There were two matters set for a consolidated hearing: 21A-UI-08626-JTT and 21A-UI-08632-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the clerk of court public records for Jasper County Criminal Case Number OWCR023084 at www.iowacourts.state.ia.us.

ISSUE:

Whether the claimant separated from the employment due to incarceration under circumstances that disqualify the claimant for unemployment insurance benefits and that relieve the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Swift Pork Company/JBS as a full-time sanitation worker until about January 5, 2021, when he went off work for the purpose of serving a 30-day jail sentence. The claimant had entered guilty pleas and had been convicted of Operating While Intoxicated Third Offense, a class D felony, and Driving While Barred, an aggravated misdemeanor, in Jasper County Criminal Case Number OWCR023084. The criminal sentence included the 30-day jail sentence that the claimant commenced serving in January 2021. The claimant suffers from COPD and was temporarily released from jail custody so that he could be hospitalized in connection with his illness. The claimant then returned to jail and completed his sentence on March 14, 2021. About a week later, the claimant contacted a union representative at Swift/JBS about returning to work, but the employer declined to allow him to return to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(11) provides as follows:

96.5 Causes for disqualification.

An individual shall be disqualified for benefits:

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 been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Administrative Code rule 871-24.26(17) provides as follows:

24.26(17) Separation due to incarceration.

a. The claimant shall be eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the 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 claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two work days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.26(17)"a"(1), the claimant shall be considered to have voluntarily quit the employment if the claimant was absent for three work days or more under subrule 24.25(4). If the absence was two days or less, the separation shall be considered a discharge under rule 871—24.32(96). If all of the conditions of subparagraphs 24.26(17)"a"(2), (3) and (4) are not satisfied, the separation should be considered a discharge under rule 871—24.32(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

When the separation from employment is based on incarceration, the claimant has burden of proving the claimant is not disqualified for benefits under Iowa Code section 96.5(11). Iowa Code section 96.6(2).

The evidence in the record establishes a disqualifying sentence based on incarceration. The claimant's 30-day jail sentence followed a guilty plea and conviction for multiple criminal offenses. The claimant started the sentence in January and finished the sentence on March 14, 2021. The claimant did not return to the employer within two days of his release to request to return to the employment. Under the above-referenced administrative rule, the claimant's absence due to incarceration was a voluntary quit without good cause attributable to the employer.

The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The March 24, 2021, reference 01, decision, decision is modified as follows. The claimant separated from the employment in January 2021 due to incarceration under circumstances that disqualify the claimant for unemployment insurance benefits and that constitute a voluntary quit without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

June 24, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits that you must repay.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.