

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERVIN R DEWALT
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 19A-UI-07079-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/11/19
Claimant: Appellant (1)

Section 96.5 – Disqualification - Incarceration

STATEMENT OF THE CASE:

Ervin Dewalt (claimant) appealed a representative's August 29, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Tyson Fresh Meats (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 30, 2019. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left a message for the employer.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on or about July 12, 2018, as a full-time production worker.

On July 30, 2019, the claimant gave a co-worker a ride home. During the ride, the claimant needed gas. The co-worker paid for the gas. On July 31, 2019, the claimant was arrested and incarcerated for forgery and money laundering. The claimant was unaware of what sort of bill the co-worker used to pay for the gas but the bill was suspect.

The claimant was scheduled to work on July 31, August 1, and August 2, 2019. He was unable to call the employer to report his absence because law enforcement would not allow him to use a telephone. His wife drove to the guard shack on the employer's property and reported his absence prior to the start of his shift.

Immediately after his release from the holding cell in the Storm Lake, Iowa, sheriff's department, he returned to work on August 3, 2019. The employer told him to report to work for a meeting on August 5, 2019. He arrived on August 5, 2019, and no one was available to speak with him. He was told to return the following day. On August 6, 2019, the employer terminated the claimant for attendance issues. The claimant was absent on July 31, August 1, and August 2, 2019.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant was disqualified for unemployment insurance benefits based on his incarceration.

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.

Based upon the evidence provided, the claimant was incarcerated from July 31 to August 3, 2019. The claimant's wife notified the employer of the absence each day. The claimant has not been found guilty of any criminal charges filed against him. Charges are pending. The claimant contacted the employer immediately upon release from being held and offered to return to work but no work was available to him. The claimant's separation was based on his incarceration. The claimant has not meet the requirements of the Iowa Code related to disqualification for incarceration as of the date of the decision. The charges have not been acted upon by the court as of this date. Therefore, the claimant is not eligible to receive unemployment insurance benefits. Should the charges be dismissed or the claimant be found not guilty of all criminal charges relating to the incarceration, he should promptly provide documentation of this to the department.

DECISION:

The representative's August 29, 2019, decision (reference 01) is affirmed. The claimant was separated due to incarceration and is not eligible to receive unemployment insurance benefits. Should the charges be dismissed or the claimant be found not guilty of all criminal charges relating to the incarceration, he should promptly provide documentation of this to the department.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs