

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KELLY B COVINGTON
Claimant

APPEAL NO. 18A-UI-12215-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 11/25/18
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit
Section 96.5 – Disqualification - Incarceration

STATEMENT OF THE CASE:

Kelly Covington (claimant) appealed a representative's December 12, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 9, 2019. The claimant participated personally. The employer was represented by Jennifer Rice, Hearings Representative, and participated by Staci Wahl, Human Resources Manager, and Abbey Bogner, Assistant Director. The employer offered and Exhibit 1 was received into evidence.

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 April 6, 2018, as a part-time night stocker. He signed for receipt of the employer's handbook and the store handbook on April 6, 2018.

The claimant did not appear for his shifts or notify the employer of his absence on September 29, 30, October 1, 2, 3, 4, and 6, 2018. The employer assumed the claimant had abandoned his job. Continued work was available had the claimant not resigned.

At some point in this time period, the claimant was arrested and incarcerated for two or three days. He did not ask law enforcement to use the telephone to call the employer. His court date on the matter is set for March 1, 2019. In mid-November 2018, the claimant talked to the human resource manager and said he was ready to return to work. The human resource manager told the claimant his job had ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Based upon the evidence provided, the claimant was incarcerated for a few days during the period he did not appear for work. He did not notify the employer of his absence. The criminal charges filed against the claimant are still pending. The claimant contacted the employer many days after his release from custody. He did offer to return to work. The employer did not have work available for him. The claimant's separation was based on his incarceration. The claimant did not meet all the Iowa Code requirements and is disqualified from receiving unemployment insurance benefits based on his incarceration. Benefits are denied.

DECISION:

The representative's December 12, 2018, decision (reference 01) is affirmed. The claimant left work based on his incarceration. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs