

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY J RABINEAU**  
Claimant

**APPEAL NO. 15R-UI-02324-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLYNN CO INC**  
Employer

**OC: 11/16/14**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(16) – Voluntary Leave/Incarceration

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated December 5, 2014, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on July 16, 2014 by failing to report for work for three days in a row and not notifying the employer of the reason. A telephone hearing was scheduled for January 14, 2015. Claimant did not participate in the hearing. On January 15, 2015, a default decision was entered affirming the adjudicator's determination. The claimant filed an appeal with the Employment Appeal Board. On February 19, 2015, the Employment Appeal Board issued an order remanding the matter back to the Appeals Section for a new hearing. In compliance with the Board's directive, after due notice was provided, a hearing was held on March 26, 2015. Claimant participated. The employer participated by Mr. Jeff Flynn, Company President.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Timothy Rabineau was employed by Flynn Co., Inc. as a full-time seasonal saw operator and laborer and was paid by the hour.

During the weekend of July 12 and 13, 2014, Mr. Rabineau was arrested for public intoxication and incarcerated for 33 days. Although Mr. Rabineau had not made arrangements to be off work from the Flynn Co., Inc. for an extended period, he nevertheless contacted his supervisor by phone to report that he had been arrested and confined in jail.

Mr. Rabineau had not been given advance permission to be off work. The claimant's supervisor told Mr. Rabineau to keep him informed of the claimant's status. The employer heard nothing further from Mr. Rabineau.

Under the terms of the company's attendance policy, employees who are absent from work and do not provide daily notice to the employer of their absences are considered to have voluntarily quit their employment after three or more consecutive days of failing to report without providing notification to the employer. Company policy also requires that employees contact the company on a daily basis to report their impending absences and the policy requires that notification must be given to both the employee's supervisor and to the company itself. After several days had elapsed wherein Mr. Rabineau had not reported for work and did not provide notice to the company that he would be absent, claimant was considered to have voluntarily quit his employment and Mr. Rabineau was removed from company employment rolls.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the claimant was considered to have quit his employment with good cause attributable to the employer. He did not.

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.

Iowa Admin. Code r. 871-24.25(16), (4) 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 section 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 section 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.

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. If an employee fails to report for work or notify the employer for three or more consecutive work days in violation of the company's notification policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

The claimant's incarceration on multiple scheduled work days was not a good cause reason attributable to the employer for leaving. The employer's conclusion that the unexcused absences were a voluntary leave of employment is reasonable. The employer is not expected

to hold employment for incarcerated employees. The claimant's failure to report for scheduled work for numerous consecutive work days without providing notification was not attributable to the employer and disqualifying under the provisions of the Employment Security Law. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated December 5, 2014, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs