

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**THADDEUS E GUICE**  
Claimant

**APPEAL NO. 18A-UI-07205-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G M R I INC**  
Employer

**OC: 06/10/18**  
**Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

Thaddeus Guice filed a timely appeal from the July 3, 2018, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Guice voluntarily quit on May 29, 2018 without good cause attributable to the employer by failing to report for work for three consecutive days without notice to the employer. After due notice was issued, a hearing was held on July 23, 2018. Mr. Guice participated. Andrew Mialkowski represented the employer. Exhibits A, B and C were received into evidence.

**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: Thaddeus Guice was employed by G M R I, Inc., d/b/a Olive Garden, as a full-time line cook and dishwasher from September 2017 and last performed work for the employer on Friday, May 25, 2018. Mr. Guice completed his shift that day. At that point, Mr. Guice was next scheduled to work on Saturday, May 26, and Sunday, May 27. On May 26, 2018, Mr. Guice was arrested, incarcerated, and charged with Operating While Intoxicated, Third Offense, and Driving While Barred. See Dubuque County Case Number OWCR128820.

On Sunday, May 27, 2018, Mr. Guice's wife telephoned the workplace and spoke with Andrew Mialkowski, General Manager, to let him know that Mr. Guice was in jail. Mr. Mialkowski told Mr. Guice's wife to have Mr. Guice contact Mr. Mialkowski upon his release from custody. At that point, no one knew how long Mr. Guice would remain in custody.

Mr. Guice remained incarcerated from May 26, 2018 until June 6, 2018, when he posted bond and was released from custody. Upon his release from custody, Mr. Guice promptly contacted the employer and spoke with the new kitchen supervisor, James Alvorv, to let the employer know that he was out of jail and ready to return to work. However, Mr. Mialkowski had deemed the employment terminated as of June 3, after Mr. Guice had missed about seven shifts due to

his incarceration. By the time Mr. Guice spoke with the new kitchen supervisor on June 6, he had missed 10 or 11 shifts. On June 6, the kitchen supervisor told Mr. Guice that Mr. Mialkowski was on vacation, that Mr. Guice had been terminated from the employer's computer system, and that Mr. Guice would need to speak with Mr. Mialkowski when Mr. Mialkowski returned from vacation. Mr. Mialkowski returned from vacation a few days later and reaffirmed that the employer deemed Mr. Guice's employment terminated. Mr. Guice's criminal charges remain pending at this time.

**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 that Mr. Guice separated from the employment due to incarceration under circumstances that disqualify him for unemployment insurance benefits under Iowa Code section 96.5(11) and under circumstances deemed a voluntary quit without good cause attributable to the employer under Iowa Administrative Code rules 871-24.26(17) and 871-24.25. Mr. Guice was incarcerated on May 26, 2018 on a felony OWI 3rd charge and an aggravated misdemeanor Driving While Barred charge. Mr. Guice's wife contacted the employer *after* the incarceration began to let the employer know of the incarceration. Mr. Guice remained incarcerated for 11 days, from his arrest on May 26, 2018 to his release from custody on June 6, 2018. During that time, Mr. Guice missed 10 or 11 shifts. Mr. Guice had missed about 7 shifts by June 3, 2018, at which point the employer deemed the employment terminated. The criminal charges against Mr. Guice have been filed, have not been dismissed, and are still pending trial. Mr. Guice is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Guice must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The July 3, 2018, reference 02, decision is modified as follows. The claimant separated from the employment due to incarceration under circumstances that disqualify him for unemployment insurance benefits and under circumstances deemed to be a voluntary quit without good cause attributable to the employer. The separation was effective May 26, 2018, the date the incarceration began. The claimant is disqualified for unemployment 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs