

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREMANE D WILLIAMS

Claimant

APPEAL NO. 17A-UI-08211-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RONNOCO ROASTERIE LLC

Employer

OC: 07/09/17

Claimant: Respondent (2)

Iowa Code Section 96.5(11) – Incarceration Disqualification
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 3, 2017, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was discharged on July 13, 2017 for no disqualifying reason. After due notice was issued, a hearing was started on August 30, 2017 and completed on September 5, 2017. Claimant Tremane Williams participated. Andrea Henderson represented the employer. Exhibits 1, 4, 5 and 6 were received into evidence. The administrative law judge took official notice of the fact-finding materials and marked those materials as Department Exhibits D-1 through D-7. The administrative law judge took official notice of the clerk of court records contained at www.iowacourts.state.ia.us regarding Polk County case numbers SRCR306902 and AMCR306903. The parties waived formal notice on the issues of whether the claimant was overpaid benefits, whether the claimant must repay benefits, whether overpaid benefits may be assessed to the employer's account and whether the employer participated in the fact-finding interview.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tremane Williams was employed by Ronnoco Roasterie, L.L.C. as a full-time plant operator. Mr. Williams began the employment in February 2016 and last performed work for the employer on Friday, June 23, 2017. Mr. Williams' work hours were 7:00 a.m. to 3:30 p.m., Monday through Friday. Mr. Williams was also required to work on Saturdays as needed. Justin Jenkins, Plant Manager

and Matt Cormey, Production Supervisor, were Mr. Williams' supervisors. After Mr. Williams completed his shift on Friday, June 23, 2017, he was next scheduled to work on Monday, June 26, 2017.

On Saturday, June 24, 2017, Des Moines police officers arrested Mr. Williams. The arrest was based on a charge of possession of a controlled substance and on an outstanding warrant from the state of New York. The New York warrant had been entered in 1995. The case number for the Polk County drug charge is SRCR306902. The case number for the extradition is AMCR306903. After Mr. Williams was arrested, he was incarcerated in the Polk County Jail on the drug charge and outstanding warrant. On June 24, 2017, the court released Mr. Williams on his own recognizance in connection with the Iowa drug charge, but continued to hold Mr. Williams without bond on the New York warrant pending extradition to New York. At the time of Mr. Williams' initial appearance on June 24, 2017, the court set an extradition hearing for July 24, 2017. According to the clerk of court records contained at www.iowacourts.state.ia.us, Mr. Williams waived the extradition procedure on June 26, 2017 and, therefore, the Polk County court dismissed the pending extradition proceeding. Mr. Williams remained in custody pending transfer to New York until July 10, 2017 at 9:00 a.m. Mr. Williams was released from custody at that time, after New York authorities declined to seek Mr. Williams' return to New York.

If Mr. Williams needed to be absent from work the employer's written attendance policy required that he notify his supervisor prior to the start of shift and speak directly to the supervisor, unless his condition prevented him from doing so. Mr. Williams received the policy during his employment and was familiar with the absence reporting policy. Mr. Williams did not contact the employer directly to notify the employer of his incarceration or of his need to be absent due to the incarceration. Mr. Williams was unable to contact the employer directly due to his incarceration. On June 26, 2017, Mr. Williams' wife, Simone Brooks, telephoned the workplace and spoke with Sheri Fakouri, Office Assistant, to let the employer know that Mr. Williams had been arrested and was in jail. Mr. Jenkins was away from the workplace at the time, Mr. Williams' significant other telephoned the employer. The employer documented no-call/no-show absences for Mr. Williams on June 27, 28, 29 and 30, 2017. Under the employer's written attendance policy, the employer deemed two consecutive no-call/no-show absences a voluntary quit.

On Monday, July 3, Mr. Jenkins sent an email message to Andrea Henderson, Human Resources Manager, to let her know that Mr. Williams had been absent the previous week during to incarceration and that the only contact with the employer had been the contact from Mr. Williams' wife on June 26, 2017. Ms. Henderson sent a letter to Mr. Williams' home address by certified mail. The letter stated that Mr. Williams had last worked on June 23, that the employer had received word that he was incarcerated, that the employer received notice of the incarceration on June 26, and that the employer had not heard anything further from Mr. Williams. The letter indicated that the employer deemed the employment terminated effective June 30, 2017. Though Mr. Williams testified that the letter was waiting for him at home when he was released from custody on July 10, the employer advises that the United States Postal Service returned the letter to the employer unopened on July 19, 2017. The employer may have sent two letters to Mr. Williams in July.

On the morning of July 11, 2017, Mr. Williams called Mr. Jenkins and requested to return to the employment. Mr. Jenkins told Mr. Williams that he would need to talk to the employer's corporate office in Saint Louis and get back to Mr. Williams. On July 13, 2017, Mr. Jenkins spoke to Mr. Williams by conference call with another company representative on the call. Mr. Jenkins told Mr. Williams that he would not be allowed to return to the employment.

Ms. Williams established a claim for unemployment insurance benefits that was deemed effective July 9, 2017. Mr. Williams has received \$2,784.00 in benefits for the eight-week period

of July 15, 2017 through September 2, 2017. Ronnoco Roasterie is the sole base period employer.

On July 31, 2017, a Workforce Development claims deputy held a fact-finding interview to address Mr. Williams' separation from the employment. Mr. Williams provided an oral statement to the claims deputy that the claims deputy documented in their notes at the time of the fact-finding interview. Mr. Williams told the claims deputy, "I have not charges pending at this time, they were dropped. I had to stay incarcerated until the warrant from New York was cleared." The employer received notice of the fact-finding interview. At the time Ms. Henderson filed the employer's protest of the claim on July 20, 2017, she indicated that she would represent the employer at the fact-finding interview and provided a telephone number for the fact-finding. However, Ms. Henderson was not available at that number at the time of the fact-finding interview. The claims deputy left a message for Ms. Henderson regarding the purpose of the call. Ms. Henderson subsequently left a voice message for the claims deputy indicating that the employer wished to rely upon the documents that had been submitted with the protest on July 20, 2017. Those documents included a copy of the attendance policy, a signed acknowledgement of the attendance policy, the email correspondence between Mr. Jenkins and Ms. Henderson, and a brief statement indicating that Mr. Williams had been "released from the company after two days of no call, no show." The statement provided additional particulars concerning the separation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The law regarding separations due to incarcerations has undergone substantial changes during the last 13 months. Prior to the Iowa Supreme Court's decision in *Irving v. Employment Appeal Board*, 883 N.W.2d 179 (Iowa 2016), Iowa Workforce Development would presume an employee who left employment due to incarceration to have voluntarily quit the employment without good cause attributable to the employer. See Iowa Code section 96.5(1) and Iowa Administrative Code rule 871-24.25(16). In *Irving*, the Supreme Court concluded "that incarceration in and [of] itself does not establish a voluntary quit. Instead, the circumstances that led to the incarceration must establish volitional acts of a nature sufficient to allow a fact finder to draw the conclusion that the employee by his intentional acts has purposely set in motion a chain of events leading to incarceration, absence from work and ultimate termination from employment." *Irving* at 209. Elsewhere in the decision, the Court considered whether absences due to incarceration could be deemed volitional and, therefore, unexcused absences

for determining eligibility for unemployment insurance benefits. *Irving* at 201-203. The Court stated:

We recognize that in some instances, conduct leading to incarceration may be so egregious and incarceration interfering with employment so predictable that an employer may establish willful or wanton disregard of its interests. We further recognize that failure to inform the employer of the incarceration, particularly over extended periods of time, may amount to misconduct.

Irving at 202. The Court added:

We further find that involuntary incarceration, at least where the charges are dismissed, also falls within the “other reasonable grounds” for absence contemplated under rule 871-24.32(7). Like illness, absences due to incarceration are involuntary.

Irving at 203.

In response to *Irving*, the Iowa Legislature enacted Iowa Code section 96.5(11) as part of the 2017 legislative session. The statute took effect on July 2, 2017, and is, for now, the law of the land. The statute moves separations due to incarceration outside the voluntary quit/discharge analysis and creates a completely new category of separation and basis for disqualification 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.

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).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the separation based on incarceration disqualifies Mr. Williams for unemployment insurance benefits. Mr. Williams was incarcerated from June 24, 2017 until July 10, 2017. Mr. Williams' absence from work began on June 26, 2017 at 7:00 a.m. Sometime during Mr. Williams' absence on June 26, his wife notified the employer that Mr. Williams was incarcerated. Neither Mr. Williams nor his wife had notified the employer of the absence *prior to the absence* as the statute required. Criminal charges *relating to the incarceration* included the Iowa drug charge and whatever charges were associated with the New York warrant. The Iowa drug charge is still pending. The New York authorities declined to recover Mr. Williams from Iowa custody. That does not mean, as Mr. Williams asserts, that the New York charge, whatever it was, was dropped. Mr. Williams presented no proof that the drug charge was dropped. The online clerk of court records indicate only that the extradition action was dismissed without prejudice in response to Mr. Williams' waiver of extradition. Mr. Williams did indeed report to the employer within two days of his incarceration to offer his services. The employer did indeed reject his offer of services.

Because the administrative law judge concludes that the incarceration-based separation disqualifies Mr. Williams for benefits, Mr. Williams remains disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Williams must meet all other eligibility requirements. The employer's account shall not be charged for benefits paid to Mr. Williams for the period beginning the entry date of this decision.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Mr. Williams received \$2,784.00 in benefits for the eight-week period of July 15, 2017 through September 2, 2017, but is disqualified for those benefits as a result of this decision. Accordingly, Mr. Williams is overpaid \$2,784.00 in benefits for the eight-week period of July 15, 2017 through September 2, 2017.

Iowa Administrative Code rule 817-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or

policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The documentation submitted by the employer is sufficient to satisfy the participation requirement relative to the fact-finding interview. Even if the employer had not satisfied the participation, the weight of the evidence indicates that Mr. Williams intentionally misrepresented to the claims deputy that he had no charges pending at the time of the fact-finding interview and that the charges against him were dropped. The weight of the evidence does not support Mr. Williams' assertion that the claims deputy was confused. Mr. Williams is required to repay the \$2,784.00 in benefits that he received for the eight-week period of July 15, 2017 through September 2, 2017. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid to the claimant.

DECISION:

The August 3, 2017, reference 01, decision is reversed. The claimant separated from the employment due to incarceration and under circumstances that disqualify him for unemployment insurance benefits. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,784.00 in benefits for the eight-week period of July 15, 2017 through September 2, 2017. The claimant must repay the benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs