

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICA JACKSON
Claimant

APPEAL 18A-UI-12042-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TCS E-SERVE INTERNATIONAL LIMITED
Employer

**OC: 11/04/18
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(11) – Incarceration Disqualification

STATEMENT OF THE CASE:

Erica Jackson (claimant) filed an appeal from the December 7, 2018, reference 05, unemployment insurance decision that denied benefits based upon the determination TCS E-Serve International Limited (employer) discharged her for violation of company policy. The parties were properly notified about the hearing. A telephone hearing was held on January 17, 2019. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

ISSUE:

Is the claimant's separation disqualifying due to incarceration?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Customer Care Associate beginning on July 5, 2018, and her last day of work was October 1, 2018. The claimant's job duties required her to handle customers' financial information.

On the evening of October 1, after work, the claimant contacted law enforcement due to a domestic situation. When the officers took her contact information as the complaining witness, they discovered a warrant for her arrest had been issued on August 31, 2017 by the state of Indiana. The claimant did not have any prior knowledge of the outstanding warrant.

The claimant was immediately placed under arrest. While in handcuffs, she was allowed to send text messages but was not allowed to make any phone calls. The claimant did not have her supervisor's personal phone number and was not able to call the absenteeism line provided by the employer. She was only able to send text messages to some co-workers and asked them to tell the supervisor she was going to miss work due to incarceration.

The claimant was released on October 3; however, the judge ordered she not work in a fiduciary position based on the nature of the pending charges. The claimant contacted her employer on October 4 and was told not to report to work until she was contacted by Human Resources. The employer and claimant agreed that based on the judge's order she could not return to her position. The claimant continued to remain employed but not allowed to return to work.

On December 4, the claimant received notice from a co-worker that personal items from her desk had been packed into boxes. No one from management has told the claimant that she has been separated from employment. The charges against the claimant are still pending and the trial is currently set for the end of March 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was separated from employment due to disqualifying conduct.

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.

The claimant was separated from employment on October 4, when she was suspended. The evidence presented establishes that the claimant gave notice to the employer that she would be absent from work due to incarceration. The claimant contacted the only individuals for whom she had a phone number in the only manner she was allowed. However, criminal charges related to the incarceration were filed and are currently pending. They have not been dismissed nor has the claimant been found not guilty. Because at least one of the points of subparagraph two was not met, and the law requires that all the terms of all four subparagraphs be met, the separation due to incarceration is disqualifying.

DECISION:

The December 7, 2018, reference 05, decision is modified with no change in effect. The claimant's separation due to incarceration was for disqualifying reasons. Benefits are withheld until such time as she works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Note to the claimant: If the charges are dismissed or she is found not guilty, she should report that to her local office or customer service as she may be eligible for benefits at that time, provided she meets all other eligibility requirements.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn