

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE P CALVERT**  
Claimant

**APPEAL NO: 12A-UI-09244-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENNOX INDUSTRIES INC**  
Employer

**OC: 07/01/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated July 25, 2012 reference 02 (amends 01) that held he voluntarily quit without good cause attributable to his employer on May 30, 2012, and benefits are denied. A telephone hearing was held on August 23, 2012. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on January 21, 1994, and last worked for the employer as a full-time tool & die change-over person on May 30, 2012. The claimant notified the employer he would become incarcerated in Tama County to serve a jail sentence. Claimant believed the employer would allow him to use some vacation to cover part of his incarceration period and keep his job open.

Claimant began serving his sentence on June 3 and was released after 26 days. He was not granted work release. When he was released he learned from his union representative he had been terminated. He has filed a grievance to save his job that is pending.

The employer failed to respond to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

871 IAC 24.25(16) 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.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer due to incarceration on June 3, 2012.

The Iowa Employment security law considers an incarceration as an employment separation that is without good cause attributable to the employer. Claimant was not available for work because he was not granted any work release. He was off work for 26 days. There is no written document the employer granted claimant a leave of absence and would hold his job open during the incarceration.

**DECISION:**

The department decision dated July 25, 2012 reference 02 (amends 01) is affirmed. The claimant voluntarily quit without good cause attributable to his employer on June 3, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs