

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HECTOR ALBA
Claimant

APPEAL NO. 12A-UI-01133-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

**OC: 12/25/11
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 25, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on February 23, 2012. Claimant participated. Employer opted not to participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a freezer worker and was separated from employment on December 16, 2011 when he was arrested and confined in jail from December 16 through 23, 2011. He went to court on February 13, 2012 and was ordered to pay a fine and has to return to court again on February 27, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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.

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 § 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 § 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.

In the context of the Iowa Employment Security Law, the separation is considered a quit. An individual who leaves employment because of incarceration is *presumed* to have quit without good cause attributable to the employer. 871 IAC 24.25(16). An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Whether voluntary or involuntary the claimant's incarceration on multiple scheduled workdays was a disqualifying separation. Employers are not expected to hold employment for incarcerated employees regardless of prior warning or attendance history. Benefits are denied.

DECISION:

The January 25, 2012 (reference 01) decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css