

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KEITH R HAUSMAN
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**Appeal Number: 05A-UI-12091-H2
OC: 11-06-05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 23, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on December 20, 2005. The claimant did participate and was represented by Nathaniel R. Boulton, Attorney at Law. The employer did not participate. Claimant's Exhibit's One through Three were entered and received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a client services specialist full time beginning in October 2000 through October 5, 2005, when he voluntarily quit his job by failing to report for work after a

leave of absence request had been denied. The claimant applied for an unpaid leave of absence on September 28. He was absent from work beginning on September 29. The claimant admits that he knew the employer had the right to either grant or deny unpaid leave. The claimant sought the leave because he was required to serve a 30-day jail sentence for an OWI conviction. The employer denied the claimant's request for unpaid leave. The claimant had a few hours of paid time off accumulated which the employer applied to his absences. The claimant did not return to work after his paid time off was used up because he was incarcerated. The claimant was absent from work without permission beginning October 4, 2005. The claimant was absent due solely to the fact that he was incarcerated and unable to come to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

The employer was not obligated to approve the claimant's request for unpaid leave merely because the claimant requested the time off. The claimant knew that it was at the employer's discretion whether they chose to grant the leave, and the employer chose not to grant the leave he requested. The claimant then was absent from work without permission due to his incarceration in the Polk County Jail. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998).

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.

As a matter of law, the claimant is deemed to have left employment voluntarily if his absence is due to his incarceration. The claimant was absent without permission due to incarceration. His separation is a voluntary quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The November 23, 2005, reference 01, decision is affirmed. The claimant voluntarily left his 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.

tkh/kjw