

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA M LIPFORD
Claimant

APPEAL NO. 11A-UI-16286-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KFC OF OTTUMWA IA
Employer

OC: 11/28/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 15, 2011, reference 02, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on January 24, 2012. The claimant participated. The employer participated by Mr. Randy Gottschalk, company owner.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Sheila Lipford was employed by KFC of Ottumwa from July 2, 2011, until approximately August 15, 2011, when the employer concluded that she had quit employment based upon her failure to report for scheduled work due to incarceration. The claimant was employed as a part-time kitchen cook and was paid by the hour. Her immediate supervisors were Dale Clark and Christy Van Dyke.

The claimant was considered to have voluntarily quit her employment after she failed to report for scheduled work for three or more consecutive workdays after August 14, 2011, without securing permission to be absent for an extended period or receiving a leave of absence from the company. On September 9, 2011, the claimant contacted the employer to report that she had been incarcerated. The claimant's immediate supervisor, Ms. Van Dyke, allowed the claimant three additional working days to report back to work. After the claimant failed to report after the three days allowed by the employer, the employer concluded the claimant had voluntarily quit employment due to incarceration.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant left employment with good cause attributable to the employer, it does not.

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(4) and (16) provide:

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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

...

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2.

The claimant's incarceration on multiple scheduled workdays was not a good-cause reason attributable to the employer for leaving. The employer's conclusion that the absences were a voluntary leaving of employment was reasonable, as an employer is not expected to hold employment for incarcerated employees. Benefits are denied.

DECISION:

The representative's decision dated December 15, 2011, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw