

ill and has been unable to prepare a decision. This decision is based on the record made before Judge Elder. The administrative law judge takes official notice of Agency benefit payment records.

#### FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Diane E. Halter was employed by Pearson Government Solutions from March 22, 2004 until she resigned in lieu of being discharged on August 12, 2005. She last worked full time as a customer service representative. On or about July 17, 2005 Ms. Halter was arrested and incarcerated for a probation violation. On or about August 10, 2005 the employer advised Ms. Halter that she would be discharged on August 15, 2005 because she had not attended work since her arrest. She was given the opportunity to resign, however, to preserve the possibility of reemployment. Continued employment was not an option, however.

Ms. Halter filed a claim for unemployment insurance benefits effective August 28, 2005. When filing her claim, she advised the Agency that she had quit.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the separation was a disqualifying event. It does.

If an individual resigns when the only other option is immediate discharge, the law views the separation as involuntary. See 871 IAC 24.26 (21). Rather than the question being whether the resignation was for good cause attributable to the employer, the administrative law judge must determine if the reason for the separation constitutes misconduct in connection with the work. See Iowa Code section 96.5-2-a.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence because of matters of personal responsibility are considered unexcused whether or not the employee properly reports the absence to the employer. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The evidence in the record establishes that Ms. Halter was absent from work from July 17, 2005 until the date of separation because she was incarcerated for violating her probation agreement. The claimant's own actions caused her absences. The evidence establishes excessive unexcused absenteeism. Benefits are withheld.

Ms. Halter testified that the employer had initially told her that it would not contest her unemployment insurance claim. Such a statement is not binding upon the Agency. At the time that Ms. Halter filed her claim for benefits, she stated that she had resigned. This statement put the Agency on notice of a potentially disqualifying issue and made it imperative for the Agency to set up a fact-finding interview.

#### DECISION:

The unemployment insurance decision dated September 19, 2005, reference 01, is modified. The claimant did not voluntarily quit. Her employment ended because of misconduct in

connection with her work. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

kkf/tjc