

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DENROY L CLACKEN

Claimant

and

WALMART INC

Employer

HEARING NUMBER: 19BUI-08125

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-11

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Employment Appeal Board would adopt and incorporates as its own the Administrative Law Judge's Findings of Fact with the following modifications:

The Claimant began his employment on September 17, **2018**, as opposed to 2019.

The Claimant received only one verbal warning for attendance. He never received any other warnings for attendance prior to his final absence.

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REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(11) (2019) provides:

96.5 Causes for disqualification.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. Incarceration — disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds **all** of the following:

- (1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.
- (2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.
- (3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.
- (4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code section 96.6(2) provides:

The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to **produce evidence showing that the claimant is not disqualified** for benefits in cases involving section 96.5, subsections 10 and **11**,....

Under these statutory provisions once the evidence shows that the Claimant became separated from employment due to the Claimant's incarceration the Claimant must produce evidence on the whether the four conditions for avoiding incarceration disqualification are met.

As noted by the Administrative Law Judge the Claimant proved the final three requirements of the statute and the only issue is whether the Claimant "notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence." Iowa Code §96.5(11)(a)(1). There is no doubt that the

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Claimant did not notify the Employer “prior to” the absence. Yet the “purpose of our unemployment compensation law is to protect from financial hardship workers who become unemployed through no fault of their own” the courts “are to construe the provisions of that law liberally to carry out its humane and beneficial purpose.” *Bridgestone/Firestone, Inc. v. Employment Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). As a corollary, the courts “**are to interpret strictly the law's disqualification provisions**, again with a view to further the purpose of the law”. *Id.* (emphasis added). In construing the act, the Court “must keep in mind the beneficial purposes of the Act, [the p]recedent that the employer has the burden of proof regarding misconduct, and [the p]recedent that the disqualification provisions of the Act are to be strictly construed against the employer.” *Irving v. EAB*, 883 N.W.2d 179, 193 (Iowa 2016)). We recognize that these principles do not overcome the literal terms of the statute. *Moulton v. Iowa 't Sec. Comm'n*, 239 Iowa 1161, 34 N.W.2d 211, 216 (Iowa 1948) (In unemployment cases “[w]hile the statute under consideration is to be liberally construed in order to effect its beneficent purpose, yet construction should not be carried beyond the limits of its plain legislative intent.”). But even literal terms do not normally require the impossible. Thus, the law has been for centuries that “there is no obligation to perform impossible things.” *E.g. Cryer v. M & M Manufacturing Company, Inc.*, 273 So. 2d 818, 830 (La. 1972) (citing sources as far back as second century AD for proposition that “impossibilium nulla obligatio est”); *Green v. Lister*, 12 U.S. 229, 246 (1814) (“Lex non cogit seu ad vana aut impossibilia,” i.e., “the law does not compel one to do vain or impossible things.”) True, an incarcerated individual has a right to a phone call under Iowa Code §804.20 and this can allow a worker to notify his employer. *See State v. Garrity*, 765 N.W.2d 592, 596-97 (Iowa 2009). But here the Claimant was **on his way to work when he was arrested**. In this circumstance the Claimant would not have had a right to a call until after he had already been late to work. *See* Iowa Code §804.20 (“after arrival at the place of detention, to call”). Thus, it was simply not possible that he call “prior to” his absence and so we find that the statute, as reasonably construed, has been satisfied

DECISION:

The administrative law judge’s decision dated November 5, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman