

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ARTURO MARTINEZ
Claimant

KRAFT HEINZ FOODS COMPANY LLC
Employer

APPEAL NO. 22A-UI-17291-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/01/22
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On September 19, 2022, Arturo Martinez (claimant) filed a timely appeal from the September 15, 2022 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on July 22, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 17, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Spanish-English interpreter Eric Caiza (#14105) of CTS Language Link assisted with the hearing. The administrative law judge took official notice of Clerk of Court records regarding Scott County case numbers OWCR385827 and OWCR423152, which records are available to the public at www.iowacourts.state.ia.us.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Arturo Martinez (claimant) was employed by Kraft Heinz Foods Company, L.L.C. as a full-time production worker from 2018 until July 25, 2022, when he voluntarily quit. Prior to quitting the employment, the claimant was charged with Operating While Intoxicated Second Offense in Scott County case number OWCR423152 and had his probation revoked in Scott County case number OWCR385827. The claimant advises he was sentenced to four months in jail in connection with the probation revocation and was directed by the court to start serving the jail time on or about July 27, 2022. Though the clerk of court record pertaining to the probation revocation indicates a sentence was entered, the record does not indicate what sentence was imposed. In anticipation of starting a four-month jail sentence in connection with the probation revocation, in June 2022, the claimant asked the employer for a four-month leave of absence to begin on or about June 27, 2022 and the employer denied the request. The employer

suggested the claimant might want to voluntarily quit and reapply after he had served the jail sentence. The claimant promptly submitted his resignation and made it effective immediately.

The claimant advises that when he attempted to report to jail to begin serving the four-month sentence, the jail lacked necessary paperwork and did not allow the claimant to commence servicing the sentence. The claimant did not promptly return to the employer to request to return to the employment. Instead, weeks later the claimant applied for employment with the employer, was not rehired, and then established an additional claim for benefits that was effective August 28, 2022.

The claimant has still not commenced the period of incarceration the claimant anticipated at the time he voluntarily separated from the employment. The claimant's next court date is a December 2022 pre-hearing conference regarding the new criminal charge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

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

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(11)(a) provides:

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.

The evidence in the record establishes a July 25, 2022 voluntary quit without good cause attributable to the employer. Though the claimant quit in anticipation of beginning a period of incarceration, the claimant did not in fact begin a period of incarceration. Thus, this is not a separation based on incarceration. There was no employment-related basis for the separation other than the employer's denial of the claimant's request for time off. The employer's denial of the request for four months off did not make the claimant's voluntary quit for good cause attributable to the employer. Under the circumstances, the employer was under no obligation to rehire the claimant when the claimant reapplied weeks later. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The September 15, 2022 (reference 091) decision is AFFIRMED. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

October 20, 2022
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.