

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHAEL J CRONK
Claimant

APPEAL NO. 19A-UI-04682-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/12/19
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's unemployment insurance decision dated May 31, 2019, reference 01, which held Michael J. Cronk eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on March 5, 2019 but finding that the record did not show willful or deliberate misconduct. After due notice was provided, a telephone hearing was held on July 3, 2019. Duly notified there was no participation by the claimant. The employer participated by Ms. Peggy Warner, Store Manager. Employer's Exhibit 1 was admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of job insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witness and having considered the evidence in the record, the administrative law judge finds: Michael J. Cronk was employed by Casey's Marketing Company from June 15, 2017 until March 11, 2019, when he was discharged for failing to report for scheduled work and not notifying the employer for five or more consecutive work shifts following Tuesday, March 5, 2019.

Mr. Cronk was employed as a full-time donut maker and was scheduled to work 2:30 a.m. until 9:30 a.m. five days per week and was paid by the hour. His immediate supervisor was Peggy Warner, Store Manager.

At approximately 3:00 a.m. on Tuesday, March 5, 2019, Ms. Warner discovered that Mr. Cronk had not opened the Casey's Marketing Company's facility at 2:30 a.m. as scheduled. At approximately 4:00 a.m. that morning, Mr. Cronk telephoned Ms. Warner to inform her that he had been incarcerated. Ms. Warner specifically instructed Mr. Cronk to maintain contact with the company, however, Mr. Cronk did not do so.

After the claimant had failed to report for work on Wednesday, March 6, 2019 through Monday, March 11, 2019, the claimant was removed from company employment rolls for voluntarily abandoning his position with the company by being incarcerated and by failing to report for scheduled work for numerous consecutive days without notifying the employer. Casey's kept his job open for him for an extended period. There was no further contact by Mr. Cronk with the company leading up to, or after his separation from employment.

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.

Iowa Code section 96.5(11) 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.

In the case at hand, the evidence in the record establishes the claimant, Mr. Cronk, failed to report for scheduled work on March 5, 2019 and thereafter. The evidence establishes that Mr. Cronk called in late during the morning of March 5, 2019 and at that time stated he was incarcerated. Although the employer attempted to keep Mr. Cronk's job open for him for an extended period of time, the company heard nothing further from Mr. Cronk. After a number of days had passed where the claimant had not reported for work or provided any additional notification, the employer reasonably concluded that Mr. Cronk had abandoned his job due to incarceration and removed Mr. Cronk from company employment rolls.

There being no evidence to the contrary, the administrative law judge concludes that the employer has, by a preponderance of the evidence, established that claimant, Mr. Cronk, quit

employment because of incarceration. Leaving one's work due to incarceration is not a good-cause reason for leaving attributable to the employer. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The administrative file reflects that Mr. Cronk has not received unemployment insurance benefits since his separation from employment from Casey's Marketing Company.

DECISION:

The representative's unemployment insurance decision dated May 31, 2019, reference 01, is reversed. The claimant left employment due to incarceration. The claimant's leaving was not attributable to the employer. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs