

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER R SCHROCK

Claimant

APPEAL NO. 12A-UI-05287-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TJB INC OF BURLINGTON IOWA

Employer

OC: 02/19/12

Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Heather Schrock (claimant) appealed a representative's May 3, 2012 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with TJB Inc of Burlington, Iowa (employer) for excessive unexcused absenteeism after she had been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 30, 2012. The claimant participated personally and through Lisa Quick, Correctional Officer. The employer participated by Debra Opiekun, Executive Director, and Wendy Jackson, Director. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 9, 2011, as a full-time room associate. The claimant signed for receipt of the employer's handbook on August 9, 2011, and February 8, 2012. The employer issued the claimant a written warning on October 6, 2011, for absenteeism. On December 8, 2011, the employer issued the claimant a verbal warning for tardiness.

On February 20, 2012, the claimant was arrested and incarcerated. She did not appear for work or notify the employer before the start of her shift that she would be absent. The claimant notified the employer after her shift started that she was incarcerated. The employer ended the claimant's employment. The claimant was either found guilty or pled guilty to three criminal charges.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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(16) provides:

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:

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

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She stopped appearing for work. When an employee stops appearing for work because she is incarcerated, her leaving is without good cause attributable to the employer. The claimant stopped appearing for work because she was incarcerated. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's May 3, 2012 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css