

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CECILIA R EIPERT**  
Claimant

**APPEAL NO. 18A-UI-07071-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHEARERS FOODS BURLINGTON LLC**  
Employer

**OC: 06/10/18**  
**Claimant: Appellant (2R)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cecilia Eipert (claimant) appealed a representative's June 27, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Shearers Foods Burlington (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 19, 2018. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left two messages for the employer but it did not respond.

**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 October 31, 2017, as a full-time machine technician one, working 10:00 p.m. to 6:00 a.m., Monday through Thursday. She does not remember receiving a handbook. The claimant knew a co-worker who reported his absences by having his wife call the employer.

On May 16, 2018, the claimant finished her shift at 6:00 a.m. Later that day, the claimant went to a hearing regarding her divorce. The judge cited her with contempt for not providing a urine sample pursuant to a court order in her divorce proceeding and incarcerated her. On May 17, 2018, prior to 3:00 p.m., the claimant's friend called the employer and reported she would not be at work because she was incarcerated. The judge dismissed the contempt charge and released the claimant from jail on May 18, 2018. The claimant returned to work on May 21, 2018, and explained to the employer what happened. The employer terminated the claimant.

The claimant was in treatment in Florida from May 22 to June 22, 2018. She filed for unemployment insurance benefits with an effective date of June 10, 2018. While she was in treatment, the claimant was able to look for work. She could not leave the treatment facility to perform work.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge finds the claimant was not disqualified for unemployment insurance benefits based on her incarceration.

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.

Based upon the evidence provided, the claimant was incarcerated from Thursday, May 17, 2018, to Friday, May 18, 2018, in jail. She did have a friend notify the employer of the absence before work on May 17, 2018. The criminal charges filed against the claimant were dismissed. The claimant contacted the employer on Monday, May 21, 2018, one working day after her release from jail. She did offer to return to work. The employer terminated her. The claimant met the Iowa Code requirements and is not disqualified from receiving unemployment insurance benefits based on her incarceration.

The issue of whether the claimant was able and available for work is remanded for determination.

**DECISION:**

The representative's June 27, 2018, decision (reference 01) is reversed. The claimant is not disqualified from receiving unemployment insurance benefits based on her incarceration. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant was able and available for work is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs