

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY E NOWATZKE
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 14A-UI-06909-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/01/14
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 24, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 28, 2014. Claimant participated. Employer participated by Michael Payne, Risk Manager.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 29, 2014. Claimant was unable to report for work because she was incarcerated in jail for three days. Claimant's mother called employer and told employer the reason for claimant's absence. Claimant did not contact employer once she was released from jail to verify whether she could return to work or not.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she missed work while she was incarcerated in jail, and did not contact employer once she was released.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In the context of the Iowa Employment Security Law, the separation is considered a quit. An individual who does not report to the employment because of incarceration is presumed to have quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(16). An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The claimant's incarceration on a scheduled workday was not a good-cause reason for the separation attributable to the employer. Employer's attribution of the absence as a voluntary leaving of employment was reasonable as it is not expected to hold employment for incarcerated employees. Benefits are denied.

DECISION:

The decision of the representative dated June 24, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs