IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEPHEN CHOP
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 08A-UI-01302-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01-13-08 R: 01
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 4, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 20, 2008. The claimant participated in the hearing. The employer provided a telephone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from October 6, 2007 to December 18, 2007. The claimant acknowledged being incarcerated between December 13 and December 18, 2007. Due to the incarceration, the employer may reasonably consider the absences, reported or unreported, a voluntary leaving of employment without good cause attributable to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2) (amended 1998). The claimant's incarceration on multiple scheduled workdays was not a good-cause reason attributable to the employer for leaving. The employer's attribution of the absences as a voluntary leaving of employment was reasonable, as it is not expected to hold employment for incarcerated employees. Therefore, benefits must be denied.

DECISION:

The February 4, 2008, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/kjw