

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS R GRIFFIS
Claimant

**SAC & FOX TRIBE
MESKWAKI TRADING POST**
Employer

APPEAL NO: 10A-UI-16924-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/28/10
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(4) – Job Abandonment
871 IAC 24.25(16) – Incarceration

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 10, 2010, reference 03, that held he voluntarily quit without good cause attributable to his employer on November 1, 2010, and benefits are denied. A telephone hearing was held on January 26, 2011. The claimant participated. Lucie Papakee, Acting HR Director, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time gas pump attendant on May 28, 2010, and last worked for the employer on Sunday, October 24.

The claimant was arrested while at work on October 24 and he was incarcerated at the Tama, Iowa county jail for eleven days. The claimant was then taken to the state of Michigan where he was incarcerated for an additional two weeks. The claimant was released on November 17 and he returned to the employer. According to employer policy, three consecutive days of no-call, no-show is considered a voluntary quit. The claimant called the employer on October 25th, but not thereafter. The employer considered claimant quit as of November 1 due to three days of no-call, no-show.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(4), (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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer due to incarceration that led to three days of no-call, no-show, effective November 1, 2010.

The incarceration does not excuse claimant from the employer policy requirement that he must call-in and/or report for scheduled work. The claimant admitted he last called on October 25, and not thereafter.

DECISION:

The department decision dated December 10, 2010, reference 03, is affirmed. The claimant voluntarily quit without good cause attributable to his employer on November 1, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs