

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA D TERRONES
Claimant

JAM EQUITIES OF ALTOONA LLC
Employer

APPEAL 21A-UI-22564-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/22/21
Claimant: Appellant (1)**

Iowa Code § 96.5(11) – Separation Due to Incarceration
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Joshua D. Terrones, filed an appeal from the October 7, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. A first telephone hearing was scheduled for December 3, 2021 but postponed at the employer’s request. After proper notice, a second telephone hearing was scheduled for December 13, 2021. At the time of hearing the claimant appeared personally, and Shana Fazal appeared for the employer. The hearing was continued to allow proper notice on the issue of whether claimant’s separation was due to incarceration pursuant to Iowa Code § 96.5(11).

After proper notice, a telephone hearing was held on December 30, 2021. The claimant participated personally. Marcus Cruff testified at claimant’s request. The employer/respondent, Jam Equities of Altoona LLC., was represented by Mariah L. (Sukalski) Slocum, attorney at law. Gabe Leal, district operator, testified for the employer. Employer Exhibits 1-6 were admitted without objection. Claimant Exhibit A was admitted over objection. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for misconduct?

Was the claimant’s separation due to incarceration and disqualifying from receiving unemployment insurance benefits?

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer operates a Popeyes restaurant. Claimant began his employment in 2020 and last worked as a full-time crew member.

When claimant was hired, he was trained on employer rules and procedures, including the employer's attendance policy. Employer's policies state that three consecutive no-call/no shows will be treated as a voluntary quit due to job abandonment, and that employees must call (not text) their manager two hours prior to a shift, if unable to work. Claimant had no prior attendance warnings.

In claimant's final weeks of employment, claimant had two direct managers. His assigned manager, James Lush, was working remotely due to a personal medical issue. He had the ability to observe the restaurant's activity through video footage from home and was accessible by phone. Mr. Crufts was filling in on-site as the manager as well. Mr. Crufts and the claimant knew each other outside of work as well.

On May 25, 2021, after beginning work, claimant was arrested and taken into custody (Claimant Exhibit A). When law enforcement initially apprehended the claimant, Mr. Crufts called Mr. Lush to notify him. After speaking with the claimant, law enforcement arrested claimant and took him into custody. Mr. Crufts was present as this happened, and claimant handed his wallet and car keys to Mr. Crufts. Mr. Lush was then updated by Mr. Crufts about claimant's arrest.

Claimant remained incarcerated from May 25, 2021 until August 22, 2021. Claimant had been arrested for a third OWI on January 8, 2021. Claimant had failed to comply with his breathalyzer test requirements (as part of probation requirements related to a second OWI) and then skipped a February 19, 2021 court date regarding the probation violation. As a result, a bench warrant was issued, and claimant was arrested while at work on May 25, 2021. The evidence presented does not support claimant's charges related to the arrest and incarceration were dismissed (Employer Exhibit 1-4, Claimant Exhibit A).

Claimant contacted Mr. Crufts by phone on May 27 and 28, 2021. Claimant did not contact management each day he missed shifts on May 27, 28 and 29, nor did he have a friend or family member contact the employer each day. However, claimant maintained contact with Mr. Crufts, through calling him two to three times per week, while incarcerated and telling him he wanted to return to Popeyes. Claimant notified Mr. Crufts that he had been released from incarceration around August 24, 2021. At that time, Mr. Crufts had transferred from Altoona to Dubuque. Mr. Crufts informed management in the Altoona region, who indicated claimant would not be rehired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation due to incarceration is disqualifying from benefits.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

The credible evidence presented is that the claimant knew he was to report his absences to management if he was unable to perform work. Claimant was absent from work from May 25, 2021 through August 22, 2021, a period of almost three months due to incarceration. Claimant's separation was a direct result of his incarceration. Claimant was arrested on a warrant, based upon skipping court after a probation violation. Claimant was on probation for pleading guilty to a second OWI, and had a third OWI on January 8, 2021.

When a claimant's separation is due to incarceration, he/she must meet all four requirements listed above to be eligible for unemployment insurance benefits. Claimant in this case made the employer aware of his incarceration, when he was arrested at the workplace on May 25, 2021, in the presence of Mr. Crufts, the acting co-manager at the time. He maintained in contact with Mr. Crufts periodically during his incarceration. The claimant did report back to Mr. Crufts that he wanted to return to work within two days of release, and the employer rejected his offer.

However, claimant's criminal charges related to the incarceration were not dismissed or claimant was found not guilty of the charges that led to his incarceration (Claimant Exhibit A, Employer Exhibit 1-4). Claimant's incarceration stemmed from a second OWI, which put him on probation, which he violated, and then skipped his court hearing related to the probation violation. Based upon these circumstances, claimant does not meet all requirements listed above in order to be eligible for unemployment insurance benefits. Therefore, benefits are denied.

DECISION:

The October 7, 2021, (reference 04) decision is affirmed. The claimant's separation due to incarceration is disqualifying. 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.



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January 31, 2022
Decision Dated and Mailed

jlb/mh