

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD M OLSON
Claimant

APPEAL NO: 12A-UI-03747-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PACK INC – LP2
Employer

OC: 02/26/12

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Richard M. Olson (claimant) appealed a representative's April 2, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Custom-Pak, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2012. The claimant participated in the hearing. Vicki Rixen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 14, 1997. He worked full time as a machine operator on the first shift. His last day of work was November 9, 2011. On November 9 the employer met with the claimant to discuss some aberrant and hostile behavior toward coworkers and others that was not typical of the claimant. The employer suggested that the claimant might need professional help, and the claimant agreed. The employer provided information to the claimant as far as the available Employee Assistance Program (EAP). The claimant agreed that he should take some time off to explore this option, and the employer provided the claimant with leave papers. As the claimant had readily agreed that he needed assistance, the employer never came to a conclusion as to what it would do had the claimant not agreed.

An appointment with an EAP counselor was scheduled for November 23, and the claimant remained off work pending meeting with that counselor. After the appointment the counselor referred the claimant on to a medical practitioner; an appointment was scheduled with the doctor for November 30. That appointment did not occur for an undetermined reason, and a new appointment was scheduled for December 6. The claimant remained off work pending the appointment with the doctor. The last information the employer had regarding the claimant's

status was that on November 23 it knew that the claimant was being referred to the doctor and that the appointment was set for November 30.

On December 1 the claimant was arrested on a charge from October 2011; he was incarcerated from that date through January 26, 2012, after being transferred from the Clinton County jail to the Scott County jail on December 9 on a separate charge. The claimant did not arrange to have the employer informed of his status; the employer learned of his incarceration through reading the local newspaper. As of December 20, 2011 the employer considered the claimant's employment terminated for job abandonment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 24.25 provides that, 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. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). While the employer had agreed to allow the claimant to be off work while he was receiving counseling and treatment, it had not agreed to allow the claimant to be off work due to legal complications and incarceration. Benefits are denied.

DECISION:

The representative's April 2, 2012 decision (reference 01) is affirmed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of December 20, 2011 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs