

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNNIE S MADISON
Claimant

APPEAL NO. 09A-UI-18547-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

**Original Claim: 11/08/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 4, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 7, 2009, in Davenport, Iowa. The employer participated by Melissa Schmidt, human resources manager. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Melissa Schmidt.

After the hearing was completed and the record was closed, the claimant arrived at the hearing. He indicated that he had taken the bus to the hearing and the bus arrived late. The administrative law judge indicated that the hearing had been completed and the record had been closed. He did not give sufficient legal cause to reopen the record.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a steel processing service center located in Bettendorf, Iowa. The claimant was hired on July 24, 2007, as a shop helper. The claimant's last day of work was August 17, 2009. He failed to call and show up for work starting on August 18, 2009. The claimant had been arrested and was in jail, although the employer did not know about it at the time. The claimant was a no-call/no-show for three days and was considered to have abandoned his job. The claimant's termination date was August 21, 2009. The claimant later called the employer and informed the employer that he had been in jail.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa law states that if an individual becomes incarcerated, he is considered to have voluntarily quit his job without good cause attributable to the employer. In this case, the claimant was arrested and put in jail on August 18, 2009. Accordingly, he is deemed to have voluntarily quit his job; and since that quit was without good cause attributable to the employer, benefits are denied.

DECISION:

The representative's decision dated December 4, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw