

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH A HEMANN
Claimant

APPEAL NO. 09A-UI-01501-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KENNETH YOUNG, TODD WICKNER ET AL
OVATIONS FOOD SERVICES LP
Employer

OC: 07/27/08 R: 02
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 27, 2009, reference 05, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 18, 2009. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a cook and was employed from February 11, 2008 until December 8, 2008 when he quit. He was incarcerated for about two weeks after having last worked on November 19, 2008. Employer did not hear from him by December 8, 2008 and considered him to have quit the employment. The claimant acknowledged being incarcerated during scheduled workdays. Due to the incarceration, 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 § 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 § 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:

(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 § 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. 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. Benefits are denied.

DECISION:

The January 27, 2009, reference 05, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css