

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN J BOLDEN
Claimant

APPEAL NO. 10A-UI-03690-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 01/31/10
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated March 3, 2010 reference 01 that held he voluntarily quit without good cause due to an incarceration on March 6, 2009, and benefits are denied. A telephone hearing was held on April 22, 2010. The claimant participated. Will Sager, HR Manager, participated for the employer.

ISSUE:

Whether the claimant voluntarily left with 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 that: The claimant began work on April 8, 2008, as a full-time production employee, and last worked on February 27, 2009. The employer warned the claimant that he was near the 14-point threshold for discharge due to excessive absences. On March 2nd, the claimant called in an absence from work. Later the same day, the Buena Vista County Sheriff arrested him for domestic abuse and assault. The claimant was incarcerated from March 2, 2009 through January 30, 2010. When the claimant failed to report for scheduled work by March 5th, he was considered to have voluntarily quit due to job abandonment. No employer representative advised the claimant he was discharged for absenteeism.

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.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer on March 5, 2009, because of his incarceration.

The incarceration is considered a quitting of employment rather than a discharge, and the employment separation is without good cause. A discharge may not be assumed or is it "automatic", because the claimant believed his absence on March 2nd would trigger a discharge for putting him over the limit (14-point threshold). There is no able and available issue, because the claimant was not in claim status during the period of his incarceration (3/2/09 – 1/30/10).

DECISION:

The decision of the representative dated March 3, 2010, reference 01, is affirmed. The claimant was not discharged, but he voluntarily quit without good cause on March 5, 2009. 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 he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs