

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLARENCE TEJAN

Claimant

APPEAL NO. 14A-UI-01552-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/19/14

Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Clarence Tejan (claimant) appealed a representative's February 7, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Tyson Fresh Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2014. The claimant participated personally. The employer participated by Dzemal Grcic, Benefits Counselor.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 7, 2013, as a full-time production worker. The claimant's last day of work was November 24, 2013. He properly reported his absence due to illness on November 25, 26, 27, 29, 30, 2013. The claimant was arrested and incarcerated on or about December 2, 2013. He was not ill but called in sick from the jail on December 3, 4, 5, 6, 2013. On December 6, 2013, the employer became concerned and mailed the claimant a certified letter asking for information about the claimant's medical condition. The information was to be provided by December 11, 2013, or the claimant would be terminated. The claimant continued to call in sick from the jail even though he was not sick on December 10, 11, 12, and 13, 2013. The letter was returned to the employer as undeliverable on December 14, 2013. The employer separated the claimant from employment. The claimant was incarcerated through approximately December 22, 2013.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

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 voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped appearing for work. When an employee stops appearing for work because he is incarcerated, his leaving is without good cause attributable to the employer. The claimant stopped appearing for work because he was incarcerated. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's February 7, 2014, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css