

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE L FITZGERALD**  
Claimant

**APPEAL NO. 09A-UI-06739-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**S & J TUBE INC**  
Employer

**Original Claim: 01/25/09  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated April 27, 2009, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 28, 2009. The claimant participated. The employer participated by Julie Belger, human resources manager. The record consists of the testimony of Michelle Fitzgerald, the testimony of Julie Belger, and Claimant's Exhibit A.

**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 witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked on the flex-crew for the employer. She was a full-time employee and worked from 2:00 p.m. to 10:30 p.m., Monday through Friday. On March 20, 2009, the claimant was at work and was arrested on a charge of conspiracy. The claimant was taken to jail and did not have a bond hearing until April 3, 2009. While the claimant was in jail, she had no way to contact her employer. The employer did know, however, that the claimant was incarcerated. As soon as the claimant was released, she went back to the employer to inquire about her job. The employer, however, considered the claimant to have quit as she had no-call, no-show days on March 23, 2009; March 24, 2009; March 25, 2009; and March 26, 2009. The employer had a written attendance policy that required an individual to call in if he or she was unable to work. The claimant was eventually exonerated of all charges and the charges against her were dismissed.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant voluntarily quit employment 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.

Under the unemployment insurance rules, a claimant who is absent from work on three consecutive workdays without properly notifying the employer in violation of a work rule, is presumed to voluntarily quit employment without good cause attributable to the employer. 871 IAC 24.25(4). Additionally, a claimant who becomes incarcerated is presumed to voluntarily quit employment without good cause attributable to the employer. 871 IAC 24.25(16).

The evidence in this case established that the claimant was absent from work on three consecutive work days and did not properly notify the employer. The fact that she was unable to call the employer because she was incarcerated does not change the result nor does the fact that the employer knew she was incarcerated. The claimant was unable to work due to her incarceration and, therefore, benefits are denied.

**DECISION:**

The decision of the representative dated April 27, 2009, reference 02, 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 her weekly benefit amount, provided she is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw