

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA M ROJAS**  
Claimant

**APPEAL NO. 10A-UI-13187-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RJK INC**  
Employer

**OC: 07/11/10**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 15, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 22, 2010, in Davenport, Iowa. Claimant participated. Employer participated by Holly Jacobi, account manager, and Mike Thomas, account manager. The record consists of the testimony of Christina Rojas; the testimony of Holly Jacobi; the testimony of Mike Thomas; Claimant's Exhibits A-C; and Employer's Exhibits 1-4.

**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 employer is a temporary employment agency. The claimant accepted an assignment to work at Grain Processing Company (GPC) in Muscatine, Iowa. She began the assignment with GPC on November 10, 2008.

The claimant was arrested for felony drug possession on December 18, 2009. Her sentence for that charge required her to spend 120 days in jail. She was given a work release and therefore continued to work at GPC for the employer. On July 2, 2010, the claimant went on her work release and reported for work at GPC. She was told she was not needed. The claimant elected to go home so that she could sleep instead of returning to jail. As a result, her work release was revoked. She was scheduled to work on July 5, 2010, and July 6, 2010. She did not go to work. She also was scheduled to work on July 9, 2010; July 10, 2010; and July 11, 2010; She did not go to work on those days either. She was released again for work on July 12, 2010. When she contacted the employer, she was told her assignment had ended.

### **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.

The evidence is uncontroverted that the claimant lost her work release and as a result she was incarcerated for five days that were scheduled work days. The claimant testified that she notified her supervisor at GPC, but she did not notify her employer. Iowa law states that if an employee is incarcerated, she is considered to have voluntarily left without good cause attributable to the employer. The claimant lost her work release because she elected to go home instead of going back to jail as required. The employer did nothing to cause the loss of the work release. Under these circumstances, the claimant is considered to have voluntarily quit without good cause attributable to the employer because of her incarceration. Benefits are denied.

**DECISION:**

The decision of the representative dated September 15, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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