

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JUDY L DAVISON
804 E CEDAR LN
MT PLEASANT IA 52641

WAL-MART STORES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09550-LT
OC: 08-08-04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the September 1, 2004, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on September 22, 2004. Claimant did participate. Employer did participate through Deedee Geiman, Kristy Hester, and Jodi Wilson. Employer's Exhibits One and Two were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time customer service clerk through March 5, 2004 when she quit. She had been hospitalized in late January or early February did not have medical work restrictions except that her doctor told her not to return to work for a week. Claimant returned to work immediately, in violation of her doctor's orders. She had swelling in her feet due to

hypertension and osteoarthritis but told the employer she did not like the hours because of the time it took away from her family and church. (Employer's Exhibit One) Claimant approached employer about her swollen feet and it allowed claimant to sit and sell credit cards Thursday through Sunday, which claimant tried off and on for two or three days. Employer offered her a job in the cash office sitting down in the evenings, which claimant declined. She turned in her resignation on February 17 effective March 5 because she "could not do the job" but gave no specific reason.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

In medical resignations, the claimant must first give the employer notice of the problem and an opportunity to remedy it in order for the voluntary quit to fall within a qualifying separation. Suluki v. EAB, 503 N.W.2d 401 (Iowa 1993). The claimant has not established that the injury was work related, as is her burden. Thus, she must meet the requirements of the administrative regulation cited above. She did not present evidence in writing to the employer that the physician suggested leaving the employment. No work restrictions were in force. The

employer attempted to find the claimant other employment with the little information it did have but that was rejected without medical foundation. Benefits are denied.

DECISION:

The September 1, 2004, reference 02, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

dml/b