

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL M DAY
Claimant

APPEAL NO. 11A-UI-02057-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/02/11
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 21, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 16, 2011. The claimant participated. The employer participated by John Wellandich, shift manager. The record consists of the testimony of April Day and the testimony of John Wellandich.

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 as a part-time sales associate for the employer's store located in Keokuk, Iowa. The claimant was hired on April 2, 2007. Her last day of work was October 26, 2010. She was considered a voluntary quit as of November 12, 2010.

On October 26, 2010, the claimant received a telephone call that her son was sick. She left at her lunch break, which was 6:00 p.m., and never returned. On November 12, 2010, the claimant told personnel that she had another job and she had quit.

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.

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 first issue to be determined is which party initiated the separation of employment. The claimant testified that she got a call on October 26, 2010, that her son was sick. She said she talked to Catherine, whom the claimant identified as a VMS, and was told that if she did not come back after her break, she would not have a job. John Wellandich testified that Catherine does not have anything to do with scheduling of personnel and has no authority to terminate individuals. The termination process is handled by human resources and follows a progressive system. The administrative law judge concludes that the claimant's testimony that she was terminated by Catherine is not credible and it is rejected in its entirety.

The greater weight of the evidence is that the claimant left work on October 26, 2010, and did not return. She, in effect, abandoned her job. She made no effort to contact her assistant manager or personnel to explain the circumstances. Mr. Wellandich testified that an incomplete shift does not automatically lead to termination and that the claimant's circumstances would have been considered. The claimant's entire version of events is not believable. The claimant voluntarily quit her job without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated February 11, 2011, reference 01, 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw