

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVE M MILLER
Claimant

APPEAL NO. 10A-UI-01148-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/27/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 26, 2010, reference 01, which held him not eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on March 2, 2010. The claimant participated personally. The employer participated by Mr. Jerry Laack.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Dave Miller was employed by Wal-Mart Stores from April 3, 2009 to April 21, 2009 when he discontinued reporting for scheduled work. Mr. Miller was employed full time and was paid by the hour.

The claimant discontinued reporting for work as he had lost his living quarters due to a death in the family and was required to seek other living arrangements in a different locale. Work continued to be available to the claimant at the time of his leaving. Although the claimant had been given a "decision date" to consider his future with the company, he had not been discharged and work continued to be available at the time he chose to leave. After the claimant had failed to report for work and had not notified the employer for three or more consecutive work days, the employer reasonably concluded that Mr. Miller had relinquished his position with the company.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant left 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.

The evidence in the record establishes that the claimant left employment while work continued to be available to him due to a change in his domestic circumstances. The claimant had lost his living accommodations and was required to move elsewhere. After the claimant had failed to report for work and did not notify his employer of the reasons for his impending absence for three or more work days, the employer concluded that he had left employment.

871 IAC 24.25(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge concludes the claimant left employment without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated January 26, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs