

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDERICK V MULLING
Claimant

APPEAL NO. 10A-UI-10835-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/07/10
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 31, 2010, reference 01, that concluded the voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 20, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Douglas Hank participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time as a stocker from December 6, 2008, to February 5, 2010. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have voluntarily quit employment after three days of absence without notice to the employer.

The claimant pulled a muscle in his back at work. He called in on February 5 and 6, but then stopped calling in. He was scheduled to work on February 7 and 8 and February 11 through February 14. He did not call in to report his absence on any of these days. The employer considered him to have voluntarily quit employment effective February 16, based on its no-call/no-show policy.

An unemployment insurance decision was mailed to the claimant's last-known address of record on March 31, 2010. The decision concluded he had voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 10, 2010.

The claimant never received the decision within the ten-day period for appealing the decision. He filed a written appeal on August 3, 2010, the day after he received notice of the decision.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law states that a decision becomes final unless the claimant files an appeal within ten calendar days after notification was mailed to the claimant's last-known address. Iowa Code § 96.6-2. In this case, the failure to file a timely appeal was due to delay by the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1 and 96.5-2-a. The unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). I believe the employer's testimony that the claimant was absent from work without notice to the employer for more than three days. He is deemed to have quit employment. No good cause has been shown for his quitting.

DECISION:

The unemployment insurance decision dated March 31, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css