

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELLEN J RICE
Claimant

APPEAL NO. 11A-UI-06837-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/01/11
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ellen Rice filed an appeal from a representative's decision dated May 20, 2011, reference 01, which denied benefits based on her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on June 20, 2011. Ms. Rice participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Rice was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rice began working for Wal-Mart on June 12, 1992. Her last day of work was December 6, 2010, at which point she was a full-time order filler. She began a medical leave of absence on December 6 due to a gastric ulcer. She has not been released by her doctor and has not attempted a return to Wal-Mart since December 6, 2010. She was not advised by a doctor to leave the employment.

Ms. Rice last saw a doctor regarding her ulcer on April 11, 2011. She then applied for an additional leave of absence. On April 29, she was advised that no additional leave of absence would be granted. She was told she could either resign or be subject to the employer's disciplinary process regarding attendance. As of April 29, she did not know if or when she might be released to resume work activity. Ms. Rice chose to quit and did so on May 2, 2011. She filed a claim for job insurance benefits effective May 1, 2011.

REASONING AND CONCLUSIONS OF LAW:

Ms. Rice left her employment on December 6, 2010 for medical reasons. It is presumed that she did so on the advice of her doctor. She immediately notified the employer of the need to be gone and was granted a leave of absence. However, Ms. Rice does not have a statement from her doctor certifying that she has recovered from the condition that caused her to leave work.

She quit before such certification was obtained. Moreover, she did not return and re-offer her services to Wal-Mart. For the above reasons, she is not entitled to benefits under Iowa Code section 96.5(1)d.

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). It appears that Ms. Rice quit in anticipation of being discharged for attendance. It must be noted that the employer had not already made a decision to discharge her due to being unable to return to work following the leave of absence. The employer was still willing to give her the benefit of its disciplinary process as used for attendance issues. When she spoke to the employer on April 29, she had not visited with her doctor since April 11. She did not, on or after April 29, question her doctors regarding whether she would return to work. Her doctors may well have released her to return to work before the employer's disciplinary policy dictated a discharge. In short, as of April 29, whether Ms. Rice would have been discharged was speculative at best.

Ms. Rice contended that she has been able to work since filing her claim effective May 1, 2011. If she was, in fact, able to work, her services should have been offered to Wal-Mart to see if any suitable work was available. After considering all of the evidence, the administrative law judge concludes that Ms. Rice quit her employment without good cause attributable to the employer. As such, benefits are denied.

DECISION:

The representative's decision dated May 20, 2011, reference 01, is hereby affirmed. Ms. Rice quit her employment with Wal-Mart without good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw