

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
FLOYD R CLARK Claimant	APPEAL NO. 17A-UI-06780-S1-T
WAL-MART STORES INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 06/11/17 Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Floyd Clark (claimant) appealed a representative's June 29, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 21, 2017. The claimant participated personally. The employer participated by David Schroeder, Co-Manager, Julie Duran, Personnel Coordinator. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from November 23, 2010, to May 15, 2017, and at the end of his employment he was working as a full-time sales associate. The claimant received the employer's handbook. It has a policy that states an employee who accumulates nine or more attendance occurrences in a rolling six-month period will be subject to termination. The claimant stopped working after May 15, 2017, because he had abdominal pain in his right quadrant. He completed Family Medical Leave Act (FMLA) documentation but he could not provide medical certification for the leave. The claimant asked the employer what would happen but did not receive a definitive answer. On June 12, 2017, the claimant went to the workplace and resigned. He told the employer he could not provide medical documentation to get his FMLA approved and he did not feel well enough to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(33) 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. When an employee quits work because he believes his performance is not to the satisfaction of the employer and the employer has not requested him to leave, his leaving is without good cause attributable to the employer. The claimant left work because he thought his attendance would result in his termination even though the employer did not request him to leave. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's June 29, 2017, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs