

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E VOGELER

Claimant

APPEAL NO. 07A-UI-08156-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 07/22/07 R: 04
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

David Vogeler filed a timely appeal from the August 16, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 11, 2007. Mr. Vogeler participated. Assistant Manager Denise Levesque represented the employer and presented additional testimony through Personnel Manager Jodi Wilson. Exhibits One through Twelve were received into evidence.

ISSUES:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes the claimant voluntarily quit.

Whether the claimant failed to return to the employment after a leave of absence.

Whether the claimant was absent three consecutive days without notifying the employer, in violation of the employer's written policy.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Vogeler commenced his full-time employment with Wal-Mart on January 12, 2004 and was a Service Technician at the time he commenced a medical leave of absence on June 13, 2007. Mr. Vogeler has an ongoing medical condition. Mr. Vogeler had taken prior approved leaves of absence and had returned to the employment. Mr. Vogeler was familiar with the employer's leave policy. After June 13, Mr. Vogeler continued to call in absences and had his wife deliver weekly doctor's excuses. The employer's leave policy required Mr. Vogeler to submit a formal leave request if he needed to be absent longer than three days. The employer made multiple requests to Mr. Vogeler that he submit a leave request before Mr. Vogeler took steps to submit the request.

On June 25, Personnel Manager Jodi Wilson contacted Mr. Vogeler to inquire when he would be returning to the employment. Mr. Vogeler indicated that he could not return at that time. Ms. Wilson spoke to Mr. Vogeler about the need to submit a leave request and Ms. Wilson indicated she would send a leave request form to Mr. Vogeler. Mr. Vogeler understood that he needed to have his doctor complete the appropriate information and return the form to Wal-Mart. Mr. Vogeler received the form and took the form with him to his July 6 doctor appointment. Mr. Vogeler signed the request form before the doctor provided information on the form. The doctor indicated on the form that the leave of absence commenced on June 13 and that Mr. Vogeler could return to work on July 7. Mr. Vogeler had his wife deliver the completed leave request form to Wal-Mart management. Mr. Vogeler called Ms. Wilson to confirm that the employer had received the leave of absence request form. Based on the July 7 return date set forth on the leave of absence request, the employer scheduled Mr. Vogeler to work, beginning on July 11. The work schedule was posted and Mr. Vogel understood that he was responsible for checking his work schedule.

On July 10, Ms. Wilson called Mr. Vogeler to confirm that he would be returning to work on Wednesday, July 11. Mr. Vogeler asked if he would need a release from his doctor to return to work and Ms. Wilson indicated that he would. Mr. Wilson indicated that he would be returning to work on July 11.

Mr. Wilson was then absent for his shifts on July 11, 12 and 13 and failed to notify the employer. When Mr. Wilson failed to appear for his shifts, the employer deemed Mr. Wilson to have abandoned the employment. The employer has a written policy that deems three no-call/no-show absences a voluntary quit. Mr. Vogeler was aware of the policy.

The following week Mr. Vogeler's spouse attempted unsuccessfully to use Mr. Vogeler's employee discount card. Mr. Vogeler then contacted the employer. Ms. Wilson advised Mr. Vogeler that the employer deemed him to have voluntarily separated from the employment. Mr. Vogeler responded, "Okay."

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Vogeler quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

A person who is absent from work three consecutive days without notifying the employer is presumed to have voluntarily quit the employment without good cause attributable to the employer, provided the employer has a written policy that notifies the employee the employer will deem three consecutive no-call/no-show absences a voluntary quit. See 871 IAC 24.25(4).

The evidence indicates that the employer was willing to re-employ Mr. Vogeler at the end of the approved leave of absence and had taken steps to put him back on the schedule effective July 11. The evidence indicates that Mr. Vogeler was aware that he was scheduled to work effective July 11 and that Mr. Vogeler had represented to the employer that he would return to work on that date. The evidence indicates that Mr. Vogeler failed to return to the employment at the end of the approved leave of absence. The evidence indicates that Mr. Vogeler was aware of the employer's policy regarding no-call/no-show absences, but was absent for three or more consecutive shifts without notifying the employer. The evidence in the record indicates a voluntary quit, not a discharge.

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 indicates that Mr. Vogeler's voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Vogeler is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Vogeler.

DECISION:

The Agency representatives August 16, 2007, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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