

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY J TURNER
Claimant

APPEAL NO. 10A-UI-06482-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/04/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 26, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 18, 2010. Claimant participated. Employer participated by Corey Miles, assistant manager. The record consists of the testimony of Anthony Turner and the testimony of Corey Miles.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time sales floor associate at the employer's store in Council Bluffs, Iowa. The claimant was hired on November 28, 2009. He was considered by the employer to have voluntarily quit his job with an effective date of March 24, 2010. The claimant was a no call/no show on three consecutive work days: March 15, 2010; March 16, 2010; and March 22, 2010. The employer has a written policy, of which the claimant was aware, that the failure to notify the employer and the failure to come to work on three consecutive work days is considered by the employer to be a voluntary quit. Work was available for the claimant had he chosen to come to work.

REASONING AND CONCLUSIONS OF LAW:

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.

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 evidence in this case established that it was the claimant who initiated the separation of employment by failing to come to work and failing to notify his employer on three consecutive work days. He testified that he quit on April 2, 2010, to take another job. This testimony is not reliable given the fact that he had not worked at all for the employer after March 14, 2010 and that he was considered to have quit on March 24, 2010. The claimant's testimony, even if unreliable, does evidence his intent to sever the employment relationship whether by quitting or by failing to show up for work. No good cause attributable to the employer was established. Benefits are denied.

DECISION:

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

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs