

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER K ANDERSON
Claimant

APPEAL NO: 06AUI -08457-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/30/06 R: 02
Claimant: Appellant (2)

Section 96.5-1-d – Leave as Result of an Injury and Offer to Work after Recovered

STATEMENT OF THE CASE:

Jennifer K. Anderson (claimant) appealed a representative's August 21, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 7, 2006. The claimant participated in the hearing. Jim Zabloudil, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Did the claimant offer to return to work after she recovered from an injury and had been released to work by her physician?

FINDINGS OF FACT:

The claimant started working for the employer on April 25, 2003. The claimant had been working as the department manager for health and beauty aids. When the employer merged the health and beauty aids department with the cosmetic department, the employer offered the claimant the manager's position in the newly combined department. The claimant declined this new position for business-related reasons. The claimant asked if the employer could transfer her to another department. The employer offered the claimant the manager's position in the candy, checkout and tobacco department. The claimant had concerns working in this department if she had to put away all the freight. After the employer said the inventory control team would put away the freight and she would be responsible primarily for paperwork, the claimant accepted the position.

After the claimant began working in the new department, the inventory control team did not put away the merchandise as the employer told her they would. The claimant was left unloading pallets of freight. When the claimant reminded the employer that she had been told the inventory control team would take care of the merchandise and they were not doing this, the employer then told the claimant to either handle all the job duties or the employer would find someone to replace her. The claimant continued working at this job until her doctor diagnosed her with carpal tunnel and restricted her from working. The claimant worked three to four weeks in this department.

The claimant experienced problems with carpal tunnel syndrome eight years ago. She did not have any problems of the nature until the employer required her to lift and put away heavy freight when she managed the candy, checkout and tobacco department. The claimant had carpal tunnel surgery on May 24, 2006. The claimant was on medical leave from May 24 through August 1, 2006. The claimant's doctor released her to return to work without any restrictions on August 1, 2006.

In a July 13 letter the claimant informed the store manager her previous job in the health and beauty aids department did not require her to do any heavy lifting. The employer assured the claimant that managing the candy, checkout and tobacco department would not require her to do any heavy lifting. The claimant informed the employer she could not return to any job that required her to do heavy lifting. The claimant did not want any more problems with carpal tunnel. The employer would carry out the employer's initial assurance that the claimant would not have to do any heavy lifting in the candy, checkout and tobacco department. After the claimant was released to return to work, the employer offered the claimant a job in customer service, but this was a night job. The claimant is a single parent and cannot work nights. Previously, the claimant worked the 7:00 a.m. to 4:00 p.m. shift. The claimant declined the night customer service position.

The employer still considers the claimant an employee, but the claimant has not worked for the employer since she was released to return to work by her doctor on August 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. A claimant who leaves employment because of an injury upon the advice of a physician and immediately informs the employer about the necessity for the absence is not disqualified from receiving benefits if she offers to return to work after recovering from the injury and is released to return to work, but the employer does not have available the claimant's regular work or suitable work for the claimant to do. Iowa Code § 96.5-1-d.

The facts establish the claimant accepted the candy, checkout and tobacco department manager's job under the condition she would not have to put away freight. After the claimant started in this position, the employer changed the claimant's job duties and required her to do a lot of lifting. The heavy lifting aggravated problems the claimant had with carpal tunnel syndrome eight years earlier. After the claimant recovered from her May 24 carpal tunnel surgery, the claimant informed the employer she could not return to any work that required her to do a lot of heavy lifting. When the claimant initially accepted this job, the employer assured the claimant she would not be required to do any heavy lifting because the inventory control teams would put away freight. In August when the claimant returned, the employer was

unwilling to make this accommodation and offered her a night job at the customer service desk. Previously, the claimant worked 7:00 a.m. to 4:00 p.m. The evidence shows the employer does not have a suitable job for the claimant to do. As a result, the claimant is unemployed for reasons that do not disqualify her from receiving unemployment insurance benefits.

DECISION:

The representative's August 21, 2006 decision (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits as of July 30, 2006, because after she recovered from an injury and offered to return to work, the employer does not have work for her to do that is comparable to the work she performed prior to May 23, 2006. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs