

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LISA M LE MATTY
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KEOKUK IA 52632

WAL-MART STORES INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-05099-DWT
OC: 04/10/05 R: 04
Claimant: Appellant (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Lisa M. LeMatty (claimant) appealed a representative's May 11, 2005 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 clamant 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 June 3, 2005. The claimant participated in the hearing. Pam Sciumbato, 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 initiate the employment separation for reasons that disqualify the claimant from receiving unemployment insurance benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on June 4, 2004. The claimant's job as a full-time bakery department lead required her to be on her feet constantly and walk during her eight-hour shift. Before the claimant worked for the employer, she had a sedentary job.

The claimant went to her doctor on January 16, 2005, because her knee went out. The claimant's doctor gave her work restrictions of no repetitive squatting, no repetitive climbing ladders and she was limited to working four-hour shifts. The employer could not accommodate the claimant's work restrictions because the claimant did not suffer a work-related injury. Even though claimant's job did not require her to do repetitive squatting or climb a ladder very often, her job required her to work eight or more hours a day. The employer could not accommodate the claimant's work restrictions and she was effectively put on a leave even though she wanted to work. The employer informed the claimant that when she was released to return to work without any work restrictions, the employer would have a job for her.

As of the date of the hearing, the claimant has not been released to return to work without any restrictions. In March 2005, the employer put the claimant on a medical leave. As of date of the hearing, the claimant plans to return to work when she is released without any medical restrictions. The claimant hopes she can be released by mid-July 2005. The claimant has not looked for another other job because she plans to return to work for the employer.

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. The facts do not establish that the claimant voluntarily quit her employment on January 16, 2005, when her doctor gave her some work restrictions. The claimant wanted to work, but the employer would not allow her to work or accommodate her work restrictions. The employer initiated the employment separation, in this case a leave of absence, when the employer would not accommodate the claimant's work restrictions.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant did not commit work-connected misconduct. Instead, her doctor restricted her from working eight hours a day because after the claimant "popped" her knee she was unable to work eight hours a day. The law specifically states that inability to work does not rise to the level of work-connected misconduct. Therefore, the claimant is not disqualified from receiving unemployment insurance benefits based on the reasons for her separation or temporary separation from employment.

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code §96.4-3. When the claimant established her claim for unemployment insurance benefits, she was only able to work four-hour shifts instead of eight-hour shifts. Basically, the claimant's doctor restricted her from working full time and only allowed the claimant to work part-time hours. Until the claimant's doctors releases her to work eight-hour shifts, the claimant's medical condition makes her unavailable to work full-time hours. As a result, the claimant is not eligible to receive unemployment insurance benefits as of April 10, 2005.

DECISION:

The representative's May 11, 2005 decision (reference 01) is modified in the claimant's favor. The claimant did not voluntarily quit her employment on January 16, 2005. Instead, the employer initiated the employment separation when the employer would not accommodate the claimant's work restrictions. Since the employer placed the claimant on a leave of absence even though the claimant was willing to work, the claimant is not disqualified from receiving unemployment insurance benefits as of April 10, 2005. However, the claimant's work restrictions only allow her to work part time and not full time as she had been doing. Therefore, as of April 10, 2005, the claimant is not eligible to receive unemployment insurance benefits because she is not able to or available for work. The claimant's ineligibility to receive benefits continues until she reopens her claim and establishes she is able to and available for work.

dlw/tjc