

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANICE DUNCAN
Claimant

WALMART INC.
Employer

APPEAL 21A-UI-00315-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Janice Duncan, the claimant/appellant, filed an appeal from the December 1, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 5, 2021. Ms. Duncan participated and testified. Anita Lock, Ms. Duncan's sister, testified on her behalf. The employer did not participate.

ISSUE:

Did Ms. Duncan voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Duncan began working for the employer on July 12, 2008. She worked as a part-time sale associate. Her last day of work was April 23, 2020 when she quit.

In about 2016, Ms. Duncan began to have back pain. In 2018, Ms. Duncan's doctor put her on a 25 pound lifting restriction. Ms. Duncan provided the doctor's note to the employer. Ms. Duncan also spoke with her manager about the lifting restriction but her job did not change. She was still required to lift heavy things, which aggravated her back and increased her pain.

In 2019, Ms. Duncan went on medical leave and filed a worker's compensation. Her claim was denied. In 2020, Ms. Duncan began using medicated back patches to deal with the pain and to allow her to attend work. Ms. Duncan's back was x-rayed in February 2020 and she visited the doctor for back pain in March 2020. On April 15, 2020 Ms. Duncan was admitted to the hospital due to her back pain.

Ms. Duncan saw her doctor many times about her back pain. Ms. Duncan also spoke with the employer many times about her back pain and reminded them of her 25 pound lifting restriction. Ms. Duncan quit her employment on April 23, 2020 because she could no longer continue working through the pain.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Duncan's separation from the employment was with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

In this case, Ms. Duncan presented competent evidence that her working conditions aggravated or caused her back pain. Ms. Duncan's doctor's note constructively served to inform the employer that she would have to quit if her 25 pound lifting restriction was not accommodated. The employer was unable to or chose not accommodate Ms. Duncan and adhere to her doctor's 25 pound lifting restriction, which would have improved her condition. Ms. Duncan has established she resigned for a good cause reason attributable to employer.

DECISION:

The December 1, 2020, (reference 01) unemployment insurance decision is reversed. Ms. Duncan quit with good cause attributable to employer. Benefits are allowed, provided she is otherwise eligible.



Daniel Zeno
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February 19, 2021
Decision Dated and Mailed

dz/scn