

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY R CLARK
Claimant

APPEAL NO. 11A-UI-14041-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 08/21/11
Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 11, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 22, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Elizabeth Graeser participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a produce department manager from December 6, 2006, to February 25, 2011.

The claimant applied for and received a leave of absence under the Family and Medical Leave Act (FMLA) starting February 27, 2011. It was extended two times, and the final ending date for the leave was June 1, 2011.

On May 23, 2011, the employer sent the claimant a letter informing her that her leave of absence was scheduled to expire. She was told that if she was able to return to work, she needed to submit a release; and if she was unable to return to work, she needed to submit a request for an extension of her leave. She was told that the 12 weeks allowed under FMLA would expire on June 1, but a personal leave would be available for up to one year. She was informed that if she did not return to work or obtain an extension of her leave, her employment would end.

The claimant did not request an extension of her leave and had no further communication with the employer. The employer considered her to have voluntarily quit employment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. 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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) 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.

The evidence establishes the claimant voluntarily quit employment without good cause attributable to the employer when she did not return to work or request an extension of her leave of absence.

DECISION:

The unemployment insurance decision dated October 11, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw