

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN . FIGG

Claimant

APPEAL NO. 10A-UI-07857-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/25/10

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 18, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 28, 2010, in Davenport, Iowa. Claimant participated. Employer participated by Ramona Priebe, assistant manager. The record consists of the testimony of Ramona Priebe; the testimony of Stephen Figg; and Employer's Exhibits 1-14.

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 employer owns and operates retail stores throughout the United States. The claimant worked at the store located in Clinton, Iowa. He was hired on January 30, 2010, as a part-time assembler. His last day of work was March 31, 2010. He was considered to have voluntarily quit his job with an effective date of April 21, 2010. The voluntarily quit was based on three consecutive workdays of no-call/ no-show.

The employer has a written policy that states that if an individual is absent for three consecutive workdays and does not call to properly report that absence, the employee is considered to have abandoned his or her job, i.e., a voluntary quit. The claimant was scheduled to work on April 18, 2010; April 17, 2010; and April 16, 2010. He did not call in to report those absences. The reason the claimant was absent was that he was required to attend three days of drill as he was a member of the National Guard. The claimant told his supervisor approximately six weeks in advance that he would be not be able to work on those days due to military duty.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant did not initiate the separation of employment in this case. Although Iowa law does consider an individual who has a no-call/no-show on three consecutive workdays in violation of an employer's policy to have voluntarily quit, that law is not applicable to this situation. The claimant notified his employer six weeks in advance that he would be on National Guard duty on April 16, 2010; April 17, 2010; and April 18, 2010. The claimant may not have called in on those days to the employer's number, but the claimant's supervisor knew that he was going to be absent. Under the Uniformed Services Employment and Re-Employment Act of 1994, 38 USC 4312, prior verbal notification to the employer satisfies the notification requirement when an individual is absent for temporary military duty. The claimant was not a no-call/ no-show for three consecutive workdays as his absence was reported to his employer. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated May 18, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css