

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANET B NELSON**

Claimant

**APPEAL NO. 07A-UI-08170-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 07/22/07 R: 01  
Claimant: Appellant (1-R)**

Section 96.5(1)d – Separation Due to Illness/Injury

**STATEMENT OF THE CASE:**

Janet Nelson filed an appeal from a representative's decision dated August 20, 2007, reference 01, which denied benefits based on her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on September 11, 2007. Ms. Nelson participated personally. The employer participated by Greg Salmon, Co-Manager.

**ISSUE:**

At issue in this matter is whether Ms. Nelson was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Nelson began working for Wal-Mart on May 16, 2005, and was last employed as a part-time cashier working approximately 20 hours each week. She was initially hired to work full time but went to part-time status at her own initiative in December of 2005. She left the employment on October 22, 2006, to undergo hip replacement surgery. According to Tri-State Orthopedic Physicians, the condition that necessitated the surgery was not work-related.

Ms. Nelson was released to return to work in December of 2006, with the restriction that she not lift items weighing more than 10 pounds. According to her job description, she had to be able to lift at least 20 pounds to work as a cashier at Wal-Mart. Ms. Nelson provided the employer with periodic statements from her doctor but was never released to lift more than 10 pounds. Because of her lifting restriction, she was not able to return to her job at Wal-Mart. As a result, she became separated from the employment on February 27, 2007. Continued work would have been available if Ms. Nelson had been able to lift at least 20 pounds.

**REASONING AND CONCLUSIONS OF LAW:**

Ms. Nelson left her employment with Wal-Mart on October 22, 2006 for medical reasons. The employer was immediately made aware of the need for absence. Ms. Nelson re-offered her

services to the employer when she was released by her doctor to resume work activity. However, she still had restrictions when she re-offered her services. In order to receive job insurance benefits pursuant to Iowa Code section 96.5(1)d, Ms. Nelson had to have recovered from her medical condition when she re-offered her services. The term "recovery" as used in section 96.5(1)d means that an individual is able to work with no restrictions or limitations. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa 1985).

Because Ms. Nelson still had restrictions when she re-offered her services to Wal-Mart, it must be concluded that she had not recovered from her condition when she attempted to return to work. Her condition was not work-related, as verified by her doctor. Where an individual does not have a full release due to a medical condition not caused by the employment, she is not entitled to job insurance benefits pursuant to section 96.5(1)d. See Hedges, cited above. The evidence of record does not establish any cause attributable to the employer for the separation. For the reasons stated herein, benefits are denied.

An individual who leaves part-time employment for no good cause attributable to the employer may still qualify for job insurance benefits if there are sufficient other wage credits in the base period of the claim to establish a valid claim. 871 IAC 24.27(96). Wage credits earned with the employer that was quit may not be used on the claim until the individual has earned at least ten times the weekly benefit amount in insured wages after the separation. This matter shall be remanded to Claims for a determination as to whether Ms. Nelson has sufficient other wage credits on which to base a claim for benefits.

**DECISION:**

The representative's decision dated August 20, 2007, reference 01, is hereby affirmed. Ms. Nelson was separated from Wal-Mart for no good cause attributable to the employer and does not qualify for benefits under any exception created by law. Benefits are denied until such time as she obtains a complete release and re-offers her services to the employer, provided the employer does not provide suitable comparable work at that time and provided she is otherwise eligible. Alternatively, benefits are withheld until such time as Ms. Nelson has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine if Ms. Nelson has sufficient other wage credits in the base period of her claim to establish a valid claim for benefits.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/kjw