

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUTUMN J BROWN
Claimant

APPEAL NO. 10A-UI-08383-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/25/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 4, 2010, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 28, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Kim Kelly participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant was employed full-time for the employer as a cashier from October 18, 2008, to April 20, 2010. The claimant requested and received a leave of absence due to grandmother's illness and subsequent death starting February 5.

The claimant had been living with her grandmother, but she had no place to live near her job in Council Bluffs after she died. She returned to Humboldt, where her family lived. She requested a transfer to the nearby store in Fort Dodge. Managers assured her that she would be granted a transfer, but ultimately the transfer was denied and the claimant was discharged for not returning to work in Council Bluffs after her leave was exhausted.

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. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The claimant was assured that she would be granted a transfer and relied on that while she was on leave. Under the circumstances, the failure of the employer to allow the transfer makes the separation involuntary. The separation should be treated as a discharge.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 4, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw