

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAY BURRELL

Claimant

APPEAL NO: 06A-UI-10855-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 10/08/06 R: 04
Claimant: Appellant (1)**

871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Jay Burrell (claimant) appealed an unemployment insurance decision dated November 1, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Wal-Mart Stores, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2006. The claimant participated in the hearing. The employer participated through Shannon Jones, Training Manager. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was technically employed full-time as an order-filler from December 29, 1998 through October 2, 2006. However, he was off work due to a non-work-related medical condition for most of 2006. He was on medical leave from December 16, 2005 through January 6, 2006; January 20, 2006 through February 16, 2006; and March 11, 2006 through October 2, 2006 when he called the employer and voluntarily resigned. The claimant was not under any medical restrictions. After his separation, his physician wrote a letter dated November 7, 2006 indicating that the claimant was seen on May 23, 2006 and July 6, 2006 with complaint of degenerative disc disease. His physician recommended the claimant work a sedentary job.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not

qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code sections 96.5-1. The claimant left his employment on March 11, 2006 due to a non-work-related medical condition. He resigned his employment on October 2, 2006 without returning to work.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant was suffering from a non-work-related medical condition but was under no medical restrictions. He was not taken off work by his physician but personally decided he could not perform his job duties. While the claimant may have had sufficient personal reasons to quit his employment, his separation cannot be attributed to the employer. Benefits are denied accordingly.

DECISION:

The unemployment insurance decision dated November 1, 2006, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs