

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CECIL HARTSON
Claimant

APPEAL NO: 10A-UI-07704-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/25/10
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Cecil Hartson (claimant) appealed an unemployment insurance decision dated May 21, 2010, 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 July 14, 2010. The claimant participated in the hearing. The employer participated through Jerry Laack, Assistant Manager. 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 employed as a full-time tire, lube and express technician from July 19, 2008 through April 29, 2010. He was on a final warning for attendance. A verbal warning was issued to him on December 22, 2008 for a no-call/no-show. The claimant received a written warning for attendance on October 9, 2009 and a decision day on February 6, 2010. Any further unexcused absences after that date were going to result in his termination.

The claimant's last day of work was April 22, 2010 and he was in a motor vehicle accident on April 23, 2010. He was not injured but his car was totaled and he had no other means of transportation. The claimant was scheduled to work on April 24, 2010 at 7:00 a.m. but failed to call before his shift or report to work on time. He came in later that day and explained his absence. He asked for a leave of absence but the employer had to check into that before it could be approved.

The claimant was a no-call/no-show on April 25 and 26, 2010. The employer contacted him and let him know it would work with him with regard to his hours while he was without transportation

but he had to report to work on April 27, 2010 or he would no longer have a job. The claimant said he had a previous arrangement with the insurance company and could not work. He was considered to have voluntarily quit as of April 27, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue 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 § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out after he was a no-call/no-show for three consecutive days and refused to report to work on the fourth day when given that opportunity by the employer. He quit due to lack of transportation. The law presumes it is a quit without good cause attributable to the employer when an employee leaves due to lack of transportation. 871 IAC 24.25(1).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated May 21, 2010, 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