

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHERISH A FRAZIER**  
Claimant

**WALMART INC**  
Employer

**APPEAL 21A-UI-11167-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21  
Claimant: Appellant (5)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 13, 2021 reference 01; decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 12, 2021 for excessive unexcused absenteeism. After due notice was issued, a hearing was held on July 7, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.  
Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began her employment with Walmart in 2018 and was employed as a full-time Asset Protection Associate at the employer's Waterloo store when she last performed work for the employer on February 3, 2021. The claimant all relevant times resided in Cedar Rapids and commuted to the workplace in Waterloo. The claimant's commute took about an hour. Courtney George, Assistant Asset Protection Manager, was the claimant's immediate supervisor.

Effective February 6, 2021, the claimant commenced a leave of absence. The claimant spoke with her supervisor and with the personnel director regarding her need to go off work. The claimant cites multiple reasons for going off work. The claimant cites as the primary reason her young adult daughter's criminal charges, incarceration, and court appearances. The claimant also cites issues with her vehicle not performing well enough to make the hour-long commute. The passenger compartment of the claimant's vehicle lacked heat. The claimant also cites general mental health issues as a factor in being off work. The claimant was not under the care of a doctor or mental health professional and her decision to go off work was not based on advice from a doctor or mental health professional. At the time the claimant went off work, the claimant gave the employer an estimated return-to work-date of four to six weeks from the time

she went off work. The broad estimate was based on the claimant not knowing what would happen in connection with her daughter's court dates. While the claimant was off work, she spent long hours dealing with her daughter's legal matters.

On March 2, 2021, the claimant notified the employer that she was ready to return to the employment and would be contacting Sedgwick, the employer's third-party leave administrator. However, before the claimant could return to work, she was involved in a motor vehicle collision on March 3, 2021 in which another vehicle "T-boned" her car. The collision bent a wheel and damaged a brake caliper. The claimant notified her supervisor about the vehicle situation and the associated need to delay her return to the employment due to her transportation issue. The claimant's supervisor was sympathetic to the claimant's predicament.

The claimant continued off work for an additional extended period. On March 4, 2021, the claimant met with an assistant manager who resides in Cedar Rapids for the purpose of returning her work keys in light of her inability to return to work at that time.

On March 17, 2021, the claimant spoke to the personnel director regarding a delay in her vehicle repair. The claimant told the employer the delay was attributable to the claimant needing to challenge the insurance carrier's initial apportionment of fault.

On March 20, 2021, the claimant's vehicle was repaired. The claimant contacted her supervisor as she was leaving that repair shop.

On March 22, 2021, the personnel director called the claimant and notified her that the employer deemed the employment terminated effective March 12, 2021.

On or about April 10, 2021, the personnel director contacted the claimant to remind her that she was eligible to reapply after being separated from the employment for 30 days. The claimant responded that she was not certain she wanted to return to working for the employer. Minutes later, the Waterloo store manager called the claimant to inquire about the circumstances of the claimant being off work. The store manager told the claimant that he wanted her to return to work in the claimant's department and accept a wage \$3.00 less than the wage before the claimant went off work. The claimant declined to return to perform additional work for the employer.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Iowa Admin. Code r. 871-24.22(2)(j)(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer, based on a failure to return to work at end of a leave of absence and based on a lack

of transportation. On February 6, 2021, the claimant commenced an approved leave of absence that was based on compelling personal reasons. The primary compelling reason was the claimant's daughter's legal issues. The weight of the evidence indicates an agreement between the claimant and the employer that the claimant would return to work within six weeks of going off work. As of March 2, 2021, the compelling issues that took the claimant off work were resolved to the point where the claimant gave notice that she was ready to return to work. However, the claimant did not return to work at that time. Thereafter, the only issue keeping the claimant off work, pursuant to the claimant's testimony, was the transportation issue related to the March 3, 2021 collision and the necessary vehicle repair. A separation from employment based on a lack of transportation is presumed to be without good cause attributable to the employer. See Iowa Admin. Code r. 817-24.25(1). The weight of the evidence establishes there was no agreement to extend the leave of absence. The weight of the evidence establishes that the claimant did not return to work within the six-week period she and the employer had agreed to at the start of the leave and that the employer deemed the employment done when the claimant did not return within the agreed upon time. Rather than take reasonable steps to arrange for alternative transportation so she could get back to work, the claimant unilaterally extended her time off work until March 20, 2021, while she wrangled with an insurance adjuster over the cost of repairing her vehicle. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The April 13, 2021, reference 01, decision is modified without change to the claimant's eligibility or the employer's liability for benefits. The claimant voluntarily quit the employment without good cause attributable to the employer by failing to return to work at the end of an approved leave of absence and due to a lack of transportation. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



---

James E. Timberland  
Administrative Law Judge

---

September 29, 2021  
Decision Dated and Mailed

jet/kmj