

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH A KUHTER
Claimant

APPEAL NO. 11A-UI-01801-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/26/10
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 15, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 14, 2011. Claimant participated. The claimant was represented by Richard Paxson. Although the employer provided the name and a telephone number of a representative, when that number was dialed by the administrative law judge, the individual who answered the phone first said that Mr. Horton was in a meeting and that the administrative law judge should call back in a few minutes. When the administrative law judge explained who she was and why she was calling, she was informed that Mr. Horton was not at work. Another individual came on the line and again the purpose of the call was explained. The individual, Alanda, said she would try to find out if someone else would participate. After being on hold for several minutes, the administrative law judge disconnected the call and held the hearing. No one from the employer called in during the hearing. As a result, the employer did not participate in the hearing. The record consists of the testimony of Joseph Kuhter.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a full-time floor sales associate at the Wal-Mart store located in Marshalltown, Iowa. The claimant was hired on May 11, 2010. The claimant's last day of work was sometime in late October 2010.

The claimant was playing basketball on a weekend in October 2010. He injured his foot. He called his employer on Monday to report his absence and was told to get some papers from the employer for a leave of absence. The claimant picked up the forms on Tuesday. He was unable to get his doctor to sign the forms that day. On Wednesday, the claimant again called to

report his absence. He was informed that he was terminated for having missed too many days of work.

The claimant recovered from his injury in approximately one and one-half weeks. He immediately began to look for a job. He obtained a job with UPS for the month of December. He filed his claim for unemployment insurance benefits with an original claim date of October 26, 2010, after his job with UPS ended. The claimant continued to look for work and is presently employed in a restaurant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 871 IAC 24.25.

There is no evidence that the claimant voluntarily quit his job. He sustained a non-work-related injury and properly reported that injury to his employer. He was told to apply for a leave of absence. Before he could even get the leave of absence request filed, he was terminated by the employer after missing too many days. He missed a total of three days. The claimant did not initiate the separation of employment. The employer severed the employment relationship. There is no evidence of misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed if the claimant is otherwise eligible.

The claimant was able and available for work as of the date he filed his claim, which was December 26, 2010. The claimant had fully recovered from his injury and had been working for UPS during December 2010. He continued to look for work and is presently employed at a restaurant in Waterloo.

DECISION:

The decision of the representative dated February 15, 2011, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. Claimant was able and available for work as of December 26, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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