

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J TINES

Claimant

APPEAL NO: 10A-UI-06329-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/28/10

Claimant: Appellant (5)

Section 96.5-1-c – Voluntary Quit/Family Illness
871 IAC 24.25(23) – Leaving due to Serious Family Needs

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 16, 2010, reference 01, that held he was discharged for misconduct on March 27, 2010, and benefits are denied. A telephone hearing was held on June 15, 2010. The claimant, and his mother, Shirley Tines, participated. Russ Smith, Shift Manager, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time over-night grocery stocker from July 28, 2009 to February 23, 2010. The claimant applied for FMLA due to his father's illness and hospitalization in order to provide him care. When the claimant left work, the employer advised him that everything looked okay. A few days later, the employer notified claimant his leave request was denied, because he did not have sufficient work time to qualify. The claimant continued to care for his father, and he did call in to report his continuing absence from work.

The employer sent claimant a letter about the middle of March stating he needed to return to work, as his leave was denied. The claimant's mother, also employee who had been absent from work, did return, but the claimant did not. The claimant's father was released to a nursing facility on March 18. When the claimant called in about March 26, he learned he had been terminated from work. The employer did effect an involuntary termination March 27, 2010 for the claimant being absent from employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

871 IAC 24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer due to leaving work to care for his ill father on February 23, 2010, but failing to return to work when no leave of absence had been granted. The involuntary termination is the failure of the claimant to return to work after he was requested to do so, in light of his voluntary leaving from employment on February 23.

There was no agreement between the claimant and the employer as to a specific leave of absence for a certain period, and the claimant understood his FMLA leave had been denied. The claimant was advised he needed to return to work in mid March, and he failed to do so within a reasonable period after his father was released from the hospital on March 18. The employer is not required to hold the claimant's job open for an indefinite period, and it made a reasonable request for him to return to work by holding it open until March 27.

DECISION:

The department decision dated April 16, 2010, reference 01, is modified. The claimant voluntarily quit without good cause attributable to his employer on March 27, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css