

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

PAUL HEIKEN  
406 – 10<sup>TH</sup> AVE S  
CLINTON IA 52732

WAL-MART STORES INC  
C/O FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02599-ET  
OC: 01-22-06 R: 04  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 2<sup>nd</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-a – Voluntary Leaving – Illness or Injury  
871 IAC 24.26(6) – Separation due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a decision dated February 27, 2006, reference 01, that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 22, 2006. The claimant participated in the hearing. Joellyn Bellmeyer, Co-Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier for Wal-Mart from

October 20, 2005 to December 29, 2005. The claimant suffered a stroke earlier in the year and on December 10, 2005, he told the employer he could only work on the self-checkout registers because his physician did not want him to work the regular register due to complications from his stroke. He had been to the emergency room December 6, 7 and 9 and they told him not to work until he saw his neurologist. The store manager told him he needed to provide a doctor's note but the claimant could not get in to see his VA neurologist until January 19, 2006, so he assumed he was on a medical leave of absence until that time. On December 29, 2006, the claimant went in to the store to pick up his check and fill out FMLA paperwork and was told his employment was terminated. After his January 19, 2006, neurologist appointment he was told he could work to the best of his ability. He took that note to the employer but it was not accepted because he had already been discharged.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon his release to return to work from a non-work related injury.

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.

871 IAC 24.26(6)a provides:

(6) Separation because of illness, injury, or pregnancy.

b. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

While the claimant's release note was somewhat ambiguous it did not offer any specific restrictions and consequently the administrative law judge cannot read restrictions into the note. The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer and benefits must be allowed.

#### DECISION:

The February 27, 2006, reference 01, decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

je/tjc