

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY R HANCOCK
Claimant

APPEAL NO: 10A-UI-11551-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/13/10
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 4, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive benefits. The claimant participated in the telephone hearing. Ashley Hockman and Josh Hurtado appeared on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working as a part-time night stocker for the employer in October 2008. During her employment, she worked full time, but went back to part-time hours in May because she could not work 40 hours a week. The claimant stocked cosmetic products.

On May 19, 2010, the claimant injured herself at work. She filed a claim for workers' compensation benefits. The claimant gave the employer her work restrictions, which included no bending, stooping or lifting more than five pounds. The claimant's personal doctor also indicated she could not twist. To accommodate her work restrictions, the employer assigned the claimant to zone or stock product such as bath towels. The claimant's supervisor required the claimant to stock towels that were above her shoulder and below her waist. The bending, stooping and standing while doing this job caused the claimant a great deal of pain.

On June 14, the claimant gave the employer a written request for another job. In the letter, the claimant explained that her current assignment violated her work restrictions and required her to do a lot of twisting. The claimant asked her supervisor for accommodations or another job. The

claimant's supervisor told the claimant there were no jobs available as a people greeter so she had to keep the zoning assignment.

On June 17, the claimant decided she could not continue to work for the employer since the work she was assigned to do caused her too much pain. After working on June 17, the claimant was not scheduled to work again until June 23. On June 23, the claimant gave the employer her letter of resignation. (Claimant Exhibit A.) The claimant's resignation was effective immediately.

The claimant established a claim for benefits during the week of June 13, 2010. Before the claimant quit, her personal physician had advised her to quit because her job, stocking and zoning, aggravated her existing back problems. Since the claimant established her claim for benefits she has been looking for work as a receptionist and telephone sales. The claimant has work experience in sales and has computer skills.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code section 96.5-1. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code section 96.6-2.

The law presumes a claimant leaves employment with good cause when she is compelled to quit as the result of a work-related injury. 871 IAC 25.26(6)b. After the claimant injured herself at work on May 19, she had work restrictions that restricted her from bending, stooping and twisting. The job the employer assigned the claimant to do, required her to bend and twist, which caused the claimant pain. Even though the claimant told her supervisor on June 14 the work she had been assigned to do did not accommodate her work restrictions, the employer did not assign the claimant to another job and told her there was no other job for her to do. When the employer could not accommodate all her work restrictions, the claimant quit. Based on the evidence presented during the hearing, the claimant established good cause for quitting her employment.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The fact the claimant was unable to perform work the employer assigned her to do, does not make her unable to or unavailable for work. Based on the jobs the claimant has been applying for, she demonstrated that she is able to and available for work. As of June 20, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's August 4, 2010 determination (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that qualify her to receive benefits. The claimant

demonstrated she is able to and available to work in jobs that the employer did not have available for her to do. As of June 19, 2010, the claimant is qualified to receive benefits based on the reasons for employment separation and is eligible to receive benefits because she is able to and available for work. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs