

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA L ADAMS
Claimant

APPEAL NO. 08A-UI-09075-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09/07/08 R: 04
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Melissa Adams filed an appeal from a representative's decision dated September 30, 2008, reference 01, which denied benefits based on her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on October 22, 2008. Ms. Adams participated personally. The employer participated by Tom Call, Assistant Manager.

ISSUE:

The primary issue in this matter is whether Ms. Adams was separated from employment for any disqualifying reason. There is also an issue as to whether she has satisfied the availability requirements of the law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Adams began working for Wal-Mart on June 17, 2004. She was last employed full time as a service desk associate and cashier. On March 21, 2008, she began a leave of absence to take care of her mother, who required round-the-clock care. The Family and Medical Act Leave (FMLA) time off was to expire on June 11. She requested an extension of the leave and it was approved through July 11.

On July 3, the employer received a fax from the mother's physician indicating that Ms. Adams would need to use FMLA on an intermittent basis. The employer contacted Ms. Adams by phone on July 3 and it was agreed that she would work July 11, 12, and 13. She contacted the employer on July 4 and indicated she would not be able to return as scheduled. Her mother's doctor was supposed to have faxed something to the employer indicating that Ms. Adams could not return as she was still providing round-the-clock care for her mother. The doctor was to have notified the employer that Ms. Adams would be unable to return to work until at least December 31, 2008. The employer did not receive such a communication from the mother's doctor.

When it had not heard further from Ms. Adams, a letter was sent to her advising that she had until August 1 to return to work or notify the employer of her intentions. The letter directed her to call either Barb or Stacy regarding her intentions. Ms. Adams signed for the certified letter on July 18. She attempted to contact Janet in the personnel office but was unable to reach her. She did not

attempt to reach Barb or Stacy as directed by the letter. She did not attempt to contact Tom Call, who was one of the individuals she spoke to over the phone on July 3. The employer removed Ms. Adams from payroll on or about August 21, 2008 after she failed to make contact in response to the letter.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Ms. Adams quit her employment with Wal-Mart. She was sent a certified letter asking that she contact the employer regarding her status. She did not contact the designated individuals or make any good-faith effort to speak to the employer regarding her continuing need to be away from work. The administrative law judge must conclude that she had no interest in preserving her employment. The employer may well have denied her request to extend the leave of absence. However, by not contacting the employer, Ms. Adams preempted any decision by the employer. For the above reasons, her separation is considered a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The term "good cause attributable to the employer" generally refers to some matter over which the employer has control. Ms. Adams left her employment because she had to provide round-the-clock care for her mother. An individual who leaves employment due to serious family needs or responsibilities is presumed to have left employment without good cause attributable to the employer. 871 IAC 24.25(23).

Inasmuch as Ms. Adams' separation was not for any cause within the control of the employer, it is concluded that she is not entitled to job insurance benefits. Moreover, in order to receive benefits, an individual must be available for and actively seeking work. Iowa Code section 96.4(3). Ms. Adams is not seeking work, because she is caring for her mother and has been since filing her claim. Because she is not available for work within the meaning of the law, she is not entitled to job insurance benefits.

DECISION:

The representative's decision dated September 30, 2008, reference 01, is hereby affirmed. Ms. Adams left her employment with Wal-Mart for no good cause attributable to the employer. She has not been available for work since filing her claim effective September 7, 2008. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility, including being available for work.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw