

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL FORMARO
Claimant

APPEAL NO. 08A-UI-05394-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04-27-08 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 29, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 1, 2008. The claimant participated in the hearing. Jack Shepherd, Assistant Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance worker for Wal-Mart from July 18, 2005 to January 31, 2008. He was a no-call/no-show January 26 through January 31, 2007, and the employer determined he voluntarily quit his job by failing to call in or show up for work for more than three consecutively scheduled workdays in violation of the employer's policy. The claimant had numerous medical problems and received a decision-making day October 28, 2007, because of his attendance (Claimant's Exhibit A). He believed he would be terminated upon his next absence and because of that assumption he did not call to report his absences January 26 through January 31, 2008.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Inasmuch as the claimant failed to report for work or properly notify the employer of his absences for three consecutive work days in violation of the employer's policy, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The May 29, 2008, reference 02, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,041.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css