

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DANIEL S MILLER
Claimant

APPEAL NO. 19A-UI-02640-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/04/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Daniel Miller (claimant) appealed a representative's March 19, 2019, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 16, 2019. The claimant participated personally. Lisa Miller observed the hearing. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time remodeler. The employer told the claimant he was hired to be part of a temporary remodeling crew for twelve weeks. The person who hired the claimant did not explain the job duties but the claimant thought he would use his skills as a carpenter working inside.

The claimant went to orientation on February 7 and 8, 2019. On February 10, 11, and 12, 2019, he spent most of his eight hour shift crawling on a concrete floor lifting heavy objects. The claimant and other workers had to get under and lift heavy shelving display units so they could be jacked up. The employer was installing a new floor.

The claimant did not go to work on February 13, 2019, because of heavy snows. On February 14, 2019, the employer told the claimant to work outside in six inches of snow and slush in his tennis shoes. The employer did not provide any outside weather gear for the claimant to wear. After two hours, the claimant quit work because the job had been misrepresented to him. He has not placed any limitations on his availability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Admin. Code r. 871-24.26(23) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer he was leaving and quit work.

When an employee quits work because the type of work was misrepresented to him when he accepted the assignment, his leaving is with good cause attributable to the employer. The claimant left work because he was not told what duties the job entailed. His leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits, provided he is otherwise eligible.

The administrative law judge concludes that the claimant is able and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There was no evidence that there were any restriction or limitation on employability. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 19, 2019, decision (reference 03) is reversed. The claimant voluntarily quit with good cause attributable to the employer. He is able and available for work. The claimant is eligible to receive unemployment insurance benefits, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs