

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L LUCKY

Claimant

APPEAL NO. 09A-UI-00334-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 05/11/08 R: 03
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 2, 2009, reference 07, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 26, 2009. Claimant participated with witnesses John Wilson and Matt Lucky. Employer participated by Edward Duran, Assistant Manager.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 31, 2008. Claimant went off work due to illness. Claimant had a doctor's note excusing her from work. Claimant took the note to employer. An employer representative told claimant to come back on the day she was released pursuant to the note. Claimant was told she did not need to call in each day. Claimant returned to work and was told she had quit by not calling in three days in a row, June 2, 2008; June 3, 2008 and June 6, 2008. Claimant returned from the sick leave and immediately asked for her job back. Claimant had no absenteeism warnings on her record. Claimant understood that three no call absences is a voluntary quit under the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when employer terminated the employment relationship because of three no call absences. This is not misconduct or a quit without good cause as claimant informed employer of the absences and promptly returned to ask for her job back after recovery. Employer was not able to refute claimant's statement that she was told to not call in every day but to come back when better according to the written doctor's orders. Absenteeism due to illness is excusable. Here claimant informed employer

and returned upon recovery. This is a separation for good cause attributable to employer. Claimant did comply with the employer's instructions and policy. Benefits allowed.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

DECISION:

The decision of the representative dated January 2, 2009, reference 07, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs