

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA K RICKERT
Claimant

APPEAL NO. 10A-UI-08456-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/25/10
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 24, 2010, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 29, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Mark Rickert. July Gudex participated in the hearing on behalf of the employer. The record was left open for the claimant to present evidence regarding her eligibility for Social Security disability benefits. The document is admitted into evidence as Exhibit A.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer from October 9, 2001, to April 23, 2010. She started working as a floor associate, a job that included unloading merchandise and stocking shelves.

The claimant has been diagnosed with fibromyalgia. The claimant's doctor recommended she be put in a less physically demanding position. He prepared a medical statement setting forth her restrictions, which including not standing for over 40 minutes and restrictions on her lifting.

In February 2009, the employer accommodated her restrictions by putting her in people greeter position, which is a job that is not physically demanding.

In 2010, supervisors asked the claimant to perform work in the candy department, which involved duties outside the claimant's job restrictions. She complained about this, but she was not relieved of those duties. She ended up missing work and requesting leaves of absence due to her health problems.

On April 23, 2010, the claimant voluntarily quit employment due to health problems.

After she quit her job, the claimant filed for social security disability benefits. On June 25, 2010, the social security administration determined the claimant was disabled and entitled to disability benefits after a waiting period of five months.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The claimant establishes the claimant had a health condition aggravated by her employment that the employer initially accommodated, but later failed to accommodate by giving her work outside the duties of the people greeter position, which the employer should have known would also violate her work restriction. Good cause attribute to the employer for quitting has been shown.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. On the other hand, a person eligible for social security disability is someone who is unable to perform any substantial gainful activity. 42 U.S.C. § 1382(a)(1)(A). The evidence establishes then that the claimant is unable to work and ineligible for benefits. If circumstances change and the claimant believes the disqualification should be lifted because she is now able to work, she must contact her local Workforce office and provide competent evidence regarding her ability to perform substantial gainful work.

DECISION:

The unemployment insurance decision dated May 24, 2010, reference 01, is modified with no change in the outcome. The claimant's separation from employment was not under disqualifying conditions, but she is ineligible for benefits because she is not able to work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css