

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH A PROSZOWSKI
Claimant

WALMART INC
Employer

APPEAL 21A-UI-13314-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On June 3, 2021, Joseph Proszowski (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated May 26, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on January 9, 2021 for personal reasons.

A telephone hearing was held on August 10, 2021. The parties were properly notified of the hearing. The claimant participated personally. Walmart Inc. (employer/respondent) did not register a number for the hearing or participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer full-time as an assembler and maintenance worker. Claimant's first day of employment was December 16, 2005. The last day claimant worked on the job was around the end of December 2020. Claimant's immediate supervisor was Richard Yates. Claimant separated from employment January 9, 2021. Claimant resigned on that date.

Claimant resigned because of health issues which prevented him from continuing to work in his position. Specifically, claimant has been diagnosed with severe arthritis in his hands, neck, and back. These issues were caused or aggravated by his employment. However, claimant did not notify management of the health issues and that he may have to resign because of them. Nor did he request an accommodation that may keep him working. He simply called in, spoke to a manager he did not know, and told her he was resigning effective immediately. Claimant did not request an accommodation because he doubted there were other positions with employer that he would have been able to do. Claimant's health issues essentially forced him to retire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated May 26, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on January 9, 2021 for personal reasons is AFFIRMED.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

“Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

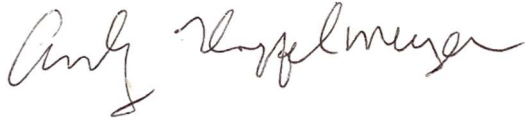
Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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 administrative law judge finds claimant resigned because of health issues which prevented him from continuing to work in his position. Specifically, claimant has been diagnosed with severe arthritis in his hands, neck, and back. These issues were caused or aggravated by his employment. However, claimant did not notify management of the health issues and that he may have to resign because of them. Nor did he request an accommodation that may keep him working. He simply called in, spoke to a manager he did not know, and told her he was resigning effective immediately.

The administrative law judge is sympathetic to claimant’s situation. However, because claimant did not inform employer of his conditions and seek accommodation that may keep him working. While employer may have declined to accommodate claimant or there may not have been other positions available that he could do, claimant did not give employer the chance to accommodate him so that he could continue employment there. The administrative law judge must find his resignation was without good cause attributable to employer.

DECISION:

The decision dated May 26, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on January 9, 2021 for personal reasons is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 13, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.