

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHANIAL J DENT**  
Claimant

**APPEAL NO. 12A-UI-07416-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 05/20/12**  
**Claimant: Appellant (2)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The claimant, Nathaniel Dent, filed an appeal from a decision dated June 12, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 17, 2012. The claimant participated on his own behalf. The employer, Wal-Mart, participated by Personnel Coordinator Tammy Hennick and Shift Manager Russell Smith. Exhibit A admitted into the record.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Nathaniel Dent was employed by Wal-Mart from July 22, 2002 until May 21, 2012 as a full-time inventory assistant. He received the employer's policies in orientation at the time of hire and they are accessible on the company computer network. Wal-Mart considers an employee who is three days no-call/no-show to work to have voluntarily quit.

Mr. Dent was absent on May 18, 2012, but he did call the toll-free employee reporting line and then spoke with Assistant Manager Derek Horton to say he would be absent. They discussed a possible leave of absence and the claimant did come to the store and pick up the papers but he never filled them out or submitted them.

He was a no-call/no-show to work on May 19 and 20, 2012, and was not scheduled May 21 and 22, 2012. When he tried to call the toll-free reporting line on May 23, 2012, he could not access it because his employee status had been deactivated. The employer considered him to have voluntarily quit because of three days no-call/no-show to work and he was notified of this when he called the store and spoke with Assistant Manager Joseph Schmidt.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant has presented sufficient evidence he did notify the employer he would be absent on May 18, 2012, when he called the reporting line and spoke with Mr. Horton. The employer did not choose to have Mr. Horton testify about whether he received the call and spoke with the claimant on that day. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

Mr. Dent acknowledged he was a no-call/no-show on May 19 and 20, 2012, but this is only two days no-call/no-show to work. Under the provisions of the above Administrative Code section, this is not a voluntary quit and benefits are allowed.

**DECISION:**

The representative's decision of June 12, 2012, reference 01, is reversed. Nathaniel Dent is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs