

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN A FOX

Claimant

APPEAL NO. 10A-UI-07024-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/11/10

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 7, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 29, 2010. Claimant participated. Employer participated by Aaron Feltmeyer, assistant manager. The record consists of the testimony of Susan Fox and the testimony of Aaron Feltmeyer.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is the Wal-Mart store located in West Burlington, Iowa. The claimant worked part time in the deli. She was hired in May 2009. In December 2009, the claimant became ill. Her condition was difficult to diagnose and she saw multiple doctors as a result. The claimant began missing work as a result of her still undiagnosed medical problem. The claimant did report her absence to her employer as required by her employer's work rules.

The claimant was terminated on March 22, 2010, for excessive absenteeism. The claimant had been in the hospital and eventually had surgery on April 7, 2010. She was released to return to work by her physician. She was able to work without restrictions on the effective date of her original claim, which was April 11, 2010. The claimant has been actively looking for work.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The uncontroverted evidence in this case is that it was the employer who initiated the separation of employment. The claimant was terminated on March 22, 2010, for what the employer deemed to be excessive absenteeism. The employer has a no-fault attendance policy and unless an illness is covered by Family Medical Leave Act (FMLA) leave, an absence for illness is considered unexcused. The claimant liked her job and did not do anything that would indicate that she quit her job voluntarily. The employer terminated the claimant. There is no evidence of misconduct. Benefits are allowed if the claimant is otherwise eligible.

The next issue is whether the claimant is able and available for work. The claimant filed for unemployment insurance benefits with an original claim date of April 11, 2010. She testified that she was able to work without restrictions as of that date and that she has been actively seeking employment. The claimant is able and available for work as of April 11, 2010.

DECISION:

The decision of the representative dated May 7, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs