

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES J LEE**  
Claimant

**APPEAL NO. 11A-UI-10084-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 07/03/11**

**Claimant: Respondent (2/R)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
871 IAC 24.26-6-b – Work-Related Illness or Injury

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's July 22, 2011 decision (reference 01) that concluded Charles J. Lee (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2011. The claimant participated in the hearing. Jonathon Whitver appeared on the employer's behalf and presented testimony from two other witnesses, Allison Welchans and Laura Schmidt. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 30, 2007. Since about June 21, 2008, he worked part-time (20 to 25 hours per week) as a gas station attendant at the employer's Dubuque, Iowa store. His last day of work was June 21, 2011.

The employer had been seeking to improve customer service, and as part of that process had begun encouraging the gas station attendants to offer to assist customers in washing their windshields. On or about June 17, 2011, the claimant had a discussion with the store manager, Mr. Whitver, regarding the employer's evolving service policy, and the claimant indicated to Mr. Whitver that he had physical problems doing the windshield washing due to problems with his back. Mr. Whitver gave the claimant a disability accommodation form and indicated that the claimant should have his doctor complete the form so that the employer could determine what accommodations it could or should provide.

The claimant went to his doctor on June 22 and then returned to the employer. He provided Ms. Welchans, assistant manager, a copy of his job description with a doctor's note written on it stating that the claimant was "not capable of performing this job due to severe problems in his

back.” The claimant told Ms. Welchans that he was just going to resign his employment. She inquired several times of him whether he understood that if he would have the doctor complete the disability accommodation paperwork indicating what his physical restrictions were, the employer could try to accommodate him. However, the claimant refused and insisted that he was going to quit the employment due to his health issues. The claimant indicated that he was refusing to complete or submit the disability accommodation paperwork because he did not think it would do any good, that he and his doctor did not understand why this was necessary, that he would have undergone a physical that he did not believe was necessary, and he did not wish to be off work during whatever interim it might have taken for the paperwork to be submitted and considered.

### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Leaving employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician with notice to the employer is recognized as grounds that are good cause for quitting. Iowa Code § 96.5-1-d. For the quit to be attributable to the employer, factors or circumstances directly connected with the employment must either cause or aggravated the claimant’s condition so as to make it impossible for the employee to continue in employment; the claimant “must present competent evidence showing adequate health reasons to justify termination [and] before quitting [must] 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.” 871 IAC 24.26(6)b (emphasis added.)

The claimant’s doctor apparently was indicating that the claimant could not continue to do the job as expected by the current job requirements. However, before quitting, the claimant did not give the employer a reasonable opportunity to correct or reasonably accommodate his medical condition. The employer reasonably could require the claimant to provide some medical evidence to establish what type of accommodation might be necessary.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer’s work environment detrimental or intolerable. O’Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the

claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's July 22, 2011 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of June 22, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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