

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL ANTHONY
Claimant

APPEAL NO: 10A-UI-10628-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06-14-09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 19, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 15, 2010. The claimant participated in the hearing. Russ Smith, Shift Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time inventory control specialist for Wal-Mart from August 18, 2009 to July 22, 2010. The claimant suffered a work-related neck injury May 2, 2010, and was on FMLA from May 27, 2010 to July 1, 2010. Consequently, the employer placed him in a modified job of people greeter, paper shredder and inventory management. He was absent July 3, 10 and 14, 2010, and because he received a verbal warning for attendance February 3, 2010, and a written warning for use of profanity April 27, 2010, he was placed on a final written warning and decision making day for attendance July 17, 2010. As part of the decision making day he was required to write a statement regarding how he would improve his attendance or explain why he was having attendance issues. The employer told the claimant that if his statement was not acceptable his employment could be terminated. The claimant did not understand what he was supposed to write and decided that he would be discharged regardless of what he wrote so he chose not to return to work and was a no-call no-show July 17, 21 and 22, 2010, and the employer determined he abandoned his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

While the claimant may have believed he would be discharged regardless of what he wrote on his decision making day statement, there is no evidence that was the case. The claimant testified he did not understand what he was supposed to write in the letter but he chose to quit without even asking the employer what type of information it expected his letter to contain or trying to write an acceptable letter. Rather than making any type of effort in that area he simply failed to return to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

DECISION:

The July 19, 2010, reference 03, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs

