

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHLEEN BYERS

Claimant

APPEAL NO. 13A-UI-00379-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 12/09/12

Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 4, 2013, reference 01, which denied benefits finding that the claimant voluntarily quit work because of a non-work-related illness of injury. After due notice was provided, a telephone hearing was held on February 13, 2013. The claimant participated personally. The employer participated by Mr. Roger Kruger, Co-Manager. Claimant Exhibit One was received into evidence.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cathleen Byers most recently began employment with Wal-Mart Stores on October 21, 2007. The claimant worked until April 4, 2012 when she requested and was granted a medical leave of absence. Ms. Byers returned to work on approximately April 23, 2012 with a four-hour limitation on her work. The employer accommodated that limitation, however, Ms. Byers left work again and resumed her leave of absence on April 30, 2012 because of ongoing medical/physiological issues. Ms. Byers resigned her position with Wal-Mart stores by telephone on December 11, 2012. The claimant left her employment with Wal-Mart at that time because she desired to access the funds in her 401k account.

Ms. Byers had initially been advised to discontinue her duties as a cashier by her mental health providers and later had been advised to once again leave on April 30, 2012 because the position of cashier was determined to be non-conducive to the claimant's mental health condition. Both the claimant and her mental health providers had made inquiries with Wal-Mart Stores about the claimant transferring to a different position within the company. Wal-Mart policy allows an accommodation on working hours for non-work-related illnesses or injury but does not allow the employee to choose to go to a different job position. The employer's expectation is that if an employee requests and is granted a leave of absence that they will be required to return to the job that they left at the end of the leave of absence. At the time Ms.

Byers tendered her resignation she continued to be on a leave of absence and would have continued in that status until April 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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 No.1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa 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 from which the employee has separated. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee individual and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j).

A claimant shall be disqualified for benefits if the claimant has left work voluntarily without good cause attributable to the employer, however a claimant's separation from employment will be considered to be for good cause attributable to the employer where factors and circumstances directly connected with the employment aggravated the illness or disease and made it impossible for the employee to continue in the employment because of a serious danger to the employee's health. See 871 IAC 24.26(6)(b). Such separations from employment may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. See IAC 24.26(6)(b). In order for a claimant to be eligible for benefits under these circumstances the evidence in the record must show that the claimant informed the employer of the work-related health problem, that the employer was aware that the claimant intended to quit unless the problem with the work conditions was corrected before the individual was reasonably accommodated and that the employer had the opportunity to remedy the situation or offer an accommodation. See 871 IAC 24.26(6)(b) and Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). Reasonable accommodation includes other comparable work that is

not injurious to the claimant's health and for which the claimant must remain available. See 871 IAC 24.26(6)(b).

In the case at hand the evidence establishes that the claimant's employment as a cashier aggravated her mental illness and the claimant was not able to return to her position as a cashier. While the evidence indicates that Ms. Byers and her mental health practitioners had attempted to secure a different position for the claimant within the Wal-Mart Stores the evidence does not establish that the employer was made aware that its failure to accommodate the claimant would cause her to quit employment. Ms. Byers had been granted initially a week-by-week medical leave of absence and subsequently Wal-Mart extended it to an open end leave of absence extending for a one-year period and the employer promised to hold the claimant's job or a similar position open for her until her return within the one-year period. The employer was not aware that the claimant intended to quit.

The evidence in the record also establishes that the precipitating factor that caused Ms. Byers to quit her job with Wal-Mart on December 11, 2012 was a desire to access 401k funds.

The administrative law judge concludes based upon the evidence in the record the employer was not properly placed on notice that Ms. Byers would quit her employment if not accommodated. The record also establishes that the claimant's reason for leaving at the time that she tendered her resignation was primarily related to her desire to access retirement funds. Ms. Byers elected to quit her job with Wal-Mart at that time and chose not to continue on a medical leave of absence that was available to her by the company. Although sympathetic to the claimant's situation, for the reasons stated herein the administrative law judge concludes that the claimant left employment on December 11, 2012 without good cause attributable to the employer. Unemployment insurance are withheld.

DECISION:

The representative's decision dated January 4, 2013, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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