

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTINA A SMITH
Claimant

APPEAL NO. 18A-UI-04495-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 03/25/18
Claimant: Appellant (4R)

Iowa Code Section 96.5(1)(c) – Employee-Initiated Separation to Care for Ill Family Member

STATEMENT OF THE CASE:

Christina Smith filed a timely appeal from the April 9, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Smith was discharged on March 2, 2018 for excessive unexcused absences. After due notice was issued, a hearing was held on May 4, 2018. Ms. Smith participated. The employer did not participate in the hearing. The employer acknowledged receipt of the hearing notice, but did not comply with the hearing notice instructions to register a telephone number at which a representative could be reached for the hearing.

ISSUE:

Whether Ms. Smith separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christina Smith was employed by Walmart, Inc. in Council Bluffs as a full-time department manager. Ms. Smith began the employment in November 2016 and last performed work for the employer on February 5, 2018. Ms. Smith's usual work hours were 6:30 a.m. to 3:30 p.m., Monday through Friday.

On Sunday, February 4, 2018, Ms. Smith's infant child was diagnosed with Respiratory Syncytial Virus (RSV). Due to the RSV diagnosis, a communicable and serious illness, Ms. Smith's baby could not go to daycare and it was necessary for Ms. Smith to stay home to care for the sick baby. On Monday, February 5, 2018, Ms. Smith notified Carey Garafalo, Personnel Manager, of her circumstances and of her need to stay home to care for the baby. Ms. Garafalo expressed empathy and directed Ms. Smith to contact Sedgwick, Walmart's third-party leave administrator. Ms. Smith promptly contacted Sedgwick and spoke to a Sedgwick representative. The representative advised Ms. Smith that the representative would send leave

application materials to Ms. Smith and her doctor. The representative directed Ms. Smith to continue to call Walmart's absence reporting line to report her absences. Under Walmart's leave policy, Ms. Smith was required to report her absences to the employer each day she was absent, even once she was on an approved leave. Ms. Smith and her doctor each promptly completed the leave application paperwork and returned it to Sedgwick. Ms. Smith's doctor made an error in the application materials by indicating that the Ms. Smith's baby did not require continuous care. Based on that erroneous entry, Sedgwick notified Ms. Smith that her request for leave was denied.

For most of her time away from work, Ms. Smith continued to make a daily call to Walmart's absence reporting line to notify the employer of her need to be absent that particular day. Ms. Smith then ceased making such contact with the employer to report her continued need to be absent. Ms. Smith asserts a lack of funds to pay for phone service and temporary loss of phone service as the reason she ceased reporting her absences to the employer. Ms. Smith resides with her baby's father. The baby's father continued to work outside the home during the period when Ms. Smith stayed home with the baby. When the baby's father was away from the home, Ms. Smith could not leave the family's home with the baby, due to the RSV. Ms. Smith went four work days without contacting Walmart to give notice of her need to be absent from work.

On March 2, 2018, Ms. Smith's baby's doctor released the baby to return to daycare. On that day, Ms. Smith contacted Ms. Garafalo, the Personnel Manager, and offered to return to the employment. Ms. Smith had not sought or accepted other employment during her time away from Walmart. On March 2, Ms. Garafalo told Ms. Smith that Ms. Smith had pointed out under the employer's attendance point system and that the employer no longer had work for her. The employer had assessed attendance points to each of the days when Ms. Smith had been absent without notifying the employer. Ms. Smith offered to report to the Walmart store to further discuss her desire to return to the employment. Ms. Garafalo told Ms. Smith there would be no point in doing that.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(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 Iowa Administrative Code rule 871-24.25.

Iowa Admin. Code r. 871-24.25(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.

Iowa Code section 96.5(1)c provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The weight of the evidence in the record establishes a separation from employment initiated by Ms. Smith for the purpose of caring for her seriously ill infant. Prior to the absence, Ms. Smith informed the employer of her need to be absent to care her ill infant. During the period of the absence, Ms. Smith eventually ceased contact with the employer and was absent without notice to the employer for four shifts. Through that absence of contact, Ms. Smith severed the employment relationship. On March 2, 2018, Ms. Smith's baby was released by the doctor to return to daycare. On that same day, Ms. Smith made contact with the employer and offered to return to the employment. Ms. Smith had not accepted other employment in the meantime. On March 2, 2018, the employer elected not to allow Ms. Smith to return to the employment. Given the basis for Ms. Smith's departure from the employment, her prompt attempt to return to the employment once she no longer needed to stay home to care for her sick infant, and the fact that she had not accepted other employment, the employer's refusal to allow her to return to the employment made the separation for good cause attributable to the employer. Based on the separation from the employment, Ms. Smith is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

At the May 4, 2018 appeal hearing, Ms. Smith testified that she is pregnant and that she would be admitted to the hospital on May 4, 2018 in connection with a problem pregnancy. Accordingly, this matter will be remanded to the Benefits Bureau for determination of whether Ms. Smith has been able to work and available for work within the meaning of the law since she established the original claim for benefits that was effective March 25, 2018.

DECISION:

The April 9, 2018, reference 01, decision is modified as follows. The claimant separated from the employment for good cause attributable to the employer. Based on the separation, the claimant is eligible for benefits provided she meets all other eligibility requirements. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work within the meaning of the law since she established the original claim for benefits that was effective March 25, 2018.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs