BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DANIEL R THOMPSON	:	
	:	**HEARING NUMBER:** 20B-UI-04223
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
WALMART INC	:	
	:	
Employer	:	

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Board adds the following additional analysis to the Administrative Law Judge's decision:

It is not uncommon for employees who quit to claim that the Employer actually fired them or laid them off. In such cases even courts that allow benefits examine the actions of the employer to determine whether the employer actually did anything that could be construed to be a termination initiated by the employer. Although there is no published Iowa case on point, guidance in Iowa comes from the unpublished Court of Appeals decision in *LaGrange v. IDJS*, (Iowa App. June 26, 1984). There the employee was sent to an alcohol abuse counselor and ordered to take antabuse, a drug which makes it impossible to drink alcohol. The employee told his counselor that he planned on not taking the medication during the weekends so that he could drink. The counselor spoke to the employer about this and then relayed to the employee that his plan was unacceptable to the employer. After this the employee was at a bar where his boss was present. He bought himself a beer and one for his boss and then drank his beer. The employer did not tell the employee that he was terminated but the employee assumed that he was. The Court of Appeals ruled that the fact that the employee was mistaken about whether he would be terminated did not negate the fact that he had voluntarily quit. *LaGrange* slip op. at 5.

Cases from other jurisdictions that allow benefits in such circumstances are generally in agreement that a termination or lay off does not take place unless a reasonable person in the employee's position would conclude that he was terminated. *See e.g. Keast v. Unemployment Compensation Board of Review*, 94 Pa.Cmwlth. 346, 503 A.2d 507 (1986)(requiring that "language used by an employer possesses the immediacy and finality of a firing" before employee could recover benefits based on mistaken quit); *Goddard v E G & G Rocky Flats* 888 P2d 369 (Colo App, 1994); *Bowen v. District of Columbia Dept. of Employment Services*, 486 A2d 694 (D.C. App. 1985)(discipline/warning not a termination); *Morgan v. Unemployment Ins. Appeals Bd*. 6 Cal Rptr 2d 34 (Cal. App., 4th Dist 1992)(same); *Spatola v Board of Review*, 72 NJ Super 483, 178 A2d 635 (1962)(same). Iowa's regulation on forced quits states that a constructive discharge occurs when "[t]he claimant was compelled to resign when given the choice of resigning or being discharged." 871 IAC 24.26(1).

Here the greater weight of the evidence does not show that the Employer told the Petitioner to quit or be fired. The Claimant made certain assumptions about what would happen, but he was not actually fired, or fired in effect. We thus affirm the Administrative Law Judge's ruling disqualifying for the quit.

Additional evidence was submitted to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information was not presented at hearing. Accordingly, none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

_____
Ashley R. Koopmans

_____
James M. Strohman

_____
Myron R. Linn

RRA/fnv