

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASNA SABIC**  
Claimant

**APPEAL NO: 13A-UI-09932-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 08/04/13**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 23, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 13, 2013. The claimant participated in the hearing with Attorney Mark Fransdal. Nicole Annis, Human Resources Manager; Dustin Melchert, Assistant Manager; and Tanis Burrell, Employer Representative; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her position due to a non-work-related injury or illness.

**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 overnight stocker for Wal-Mart from September 13, 2007 to April 12, 2013. She became pregnant in January 2013 and continued her job, mostly doing night stock in housewares, until March 2013, at which time she began complaining about the lifting involved in housewares and asked the employer for a lighter lifting area, such as cosmetics, and although the employer tried to move her around when it could, it was not able to comply with her requests very often.

The claimant had suffered a miscarriage in the fall of 2012, when she was seven weeks pregnant, after working an overnight shift, and consequently she was very concerned that she might miscarry again. When the employer could not routinely put her in a lighter lifting position, the claimant chose to voluntarily quit her job April 12, 2013. At the time she left her job she told the employer she “just wanted to be safe and home and be a mom.” The claimant never provided the employer with a doctor’s note regarding her condition or stating any restrictions

applicable to her and she did not ask about family and medical leave (FML) or any type of time off. The claimant delivered her child October 10, 2013. She does not believe she could have performed any work after approximately July 10, 2013, three months prior to the date her baby was born.

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

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

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

While sympathetic to the fact the claimant experienced a miscarriage after stocking overnight for the employer approximately one year before the birth of her child in October 2012, and was concerned about working in housewares during her next pregnancy as a result, the claimant never provided the employer with any type of doctor's excuse or restrictions. Consequently, the employer had no way of knowing what the claimant actually could or could not do. The claimant went to her doctor prior to her decision to leave her employment but failed to ask for a note defining her restrictions or to ask the employer about FML, which also could have protected her unborn child and her job. Rightly or wrongly, the employees bear the burden of pursuing FML and/or a similar type of leave, while the employer is not obligated to speak to them about it or suggest it when an employee may be in a time of need, and the claimant did not inquire with the employer about any of the programs, designed to protect employees' jobs. The employer is not obligated to accommodate a non-work-related medical condition and the claimant never obtained the advice of a physician stating she could no longer work until after she had her child or restricting her work activities in any way. Additionally, because the claimant chose to quit her job, the employer does not have to offer her a position after she has been certified as ready to return to work. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The August 23, 2013, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs