

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN FOX

Claimant

APPEAL NO: 12A-UI-14021-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 10/28/12

Claimant: Appellant (2)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.26(6) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 20, 2012, 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 January 2, 2013. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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 apparel associate for Wal-Mart from March 10, 2008 to October 29, 2012. The claimant was moved from an over the counter pharmacy technician in June or July 2011 at which time she was forced to make a move to the Apparel Department in order to keep her job because of a personality conflict with a supervisor who she believed was going to terminate her employment within the next two weeks.

The claimant had a set schedule of 7:00 a.m. to 4:00 p.m. in the pharmacy department but had to take a cut in pay and a varied schedule in the Apparel Department. She suffers from anxiety, irritable bowel syndrome and colitis and her schedule and situation in the Apparel Department were making those conditions worse. On December 16, 2011, the claimant's doctor asked that she receive a set schedule followed by two consecutive days off rather than seven to eight days on followed by one day off. The employer complied in part but refused to return the claimant to her hours of 7:00 a.m. to 4:00 p.m., which were less busy times in the store, or move her to a less stressful department, and the stress exacerbated her anxiety and colitis. The claimant used intermittent FMLA and was taken off work on other occasions by her treating physician. On September 5, 2012, the claimant suffered another anxiety issue and was placed on a leave of absence from September 5 through October 18, 2012, as she was also experiencing panic attacks, heart palpitations, exhaustion and diarrhea. On September 27, 2012, she experienced

severe anxiety with gastrointestinal issue due to the stress of the hours and department the employer insisted she work. The problems persisted over the next month until the claimant's doctor told her she needed to quit her job and the claimant did so October 29, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her job for 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. Raffety v. IESC, 76 N.W.2d 787 (Iowa 1956). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). A voluntary quit based on illness is clearly disqualifying except upon the advice of a licensed and practicing physician. Taylor v. IDJS, 362 N.W.2d 534 (Iowa 1985). The claimant's medical condition was definitely aggravated by the change in her employment and she was instructed to leave her job with the employer by her treating physician. Under these circumstances, the administrative law judge concludes the claimant has met her burden of proving that her leaving was for good cause attributable to the employer. Therefore, benefits are allowed.

DECISION:

The November 20, 2012, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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