

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA JOHNSON

Claimant

APPEAL NO: 10A-UI-06686-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03-07-10

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 29, 2010, reference 02, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on June 24, 2010. The claimant participated in the hearing. Shirley Simonson, Human Resources Manager and Irit Keren, Assistant Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

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 cashier for Wal-Mart from August 13, 2003 to March 14, 2010. She injured her back after she fell walking into the employer's store in late February 2008. The employer would not let her complete an accident report because it said since she was coming into work it was not its fault. In May 2008 her back went out. She had an MRI and four epidural shots. At that time the employer asked her to fill out an accident report and sent her to its doctor who said there was nothing wrong with her back. In November 2009 her back was "acting up" so she used her intermittent FMLA to have epidural shots in November, and December 2009 and January, February 2010, and March 2010. When she took her intermittent FMLA and leave of absence February 25, 2010 to March 11, 2010, her physician also placed her on a weight restriction of ten pounds. It was the claimant's understanding that the employer's policy stated an employee could not work with any restrictions unless put in place by the employer's worker's compensation doctor, which did not occur in this case. The claimant tried to work with the employer about changing her schedule so her schedule would not inflame her back injury and require her to continue to get epidurals and take a leave of absence as a result but the employer declined to work with her. Her doctor told her she would be on the ten pound lifting restriction for the rest of her life. After her leave of absence of February 25 to March 11, 2010, the claimant called in to report she was sick March 12 and 13, 2010, and then gave the employer her resignation so she could receive her 401K instead of facing termination.

She resigned because she knew she could not perform her job as a cashier with the weight restriction because she could not lift heavy items from the counter into bags or shopping baskets and because as she understood the employer's policy it would not honor a medical restriction if the injury was not work related and the employer had initially denied that it was a worker's compensation claim and would not allow her to fill out a first report of injury until she saw her doctor and was on FMLA and taking leaves of absences and then when she saw the employer's doctor he said there was not anything wrong with the claimant so she was unaware the employer subsequently determined it was a worker's compensation injury. Additionally, neither her assistant manager nor human resources told her it would accommodate her restrictions nor that she could be a people greeter or answer phones or something of that nature.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with 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 quit because of a medical condition attributable to the employer need not be upon the advice of a physician. McComber applies. Section 96.5-1-d does not. Rooney v. EAB, 448 N.W.2d 313 (Iowa 1989). The claimant's injury was clearly caused by the employer as the claimant slipped on its property when walking into the building to go to work in 2008. The employer apparently later came to the same conclusion but the claimant was not aware of that fact as she was not told after initially being denied the opportunity to fill out the first report of injury papers. Although the employer eventually allowed her to complete the papers and sent her to its doctor, he said there was not anything wrong with her, contradicting what her own physician said. The employer did not give the claimant any indication it would accommodate her restrictions and consequently she thought she had to quit her job or face termination because she could not perform her position as a cashier with her lifting restriction. Under these circumstances the administrative law judge concludes the claimant's leaving was attributable to the employer as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The April 29, 2010, reference 02, 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

je/pjs