

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT G MCKEE
Claimant

APPEAL NO. 11A-UI-11955-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/07/11
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 2, 2011, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on October 5, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Brian Howe participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked as an overnight stocker from June 23, 2007, to May 23, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were deemed to have quit after three days of absence without notice to the employer.

On May 12, 2011, the claimant injured his wrist while breaking down some boxes. He was treated at the hospital emergency room, but he returned to work afterward and was given a light-duty job working as a greeter for the rest of his shift.

The claimant was diagnosed as having a wrist fracture and his wrist was put in a brace. On May 19, 2011, he returned to work in a light-duty job that did not involve the use of his injured hand. He worked in that position through May 23, 2011.

The claimant stopped reporting to work after May 23 because he decided that he could not work as a greeter because of pain in his wrist. There is no evidence the claimant was excused from working by a doctor after May 23 or requested a leave of absence. He was absent without notifying the employer on May 25. He called in absent on May 26 through 28. He was absent without notifying the employer on May 31. He called in from June 1 through 11. He was absent without notifying the employer on June 14, but he called in absent June 14 through 17. He was

absent without notifying the employer June 21, 22, and 23, but called in on June 24. The claimant did not call in after June 24. The claimant asserts that at some point, the automated call-in process informed him that he was not in the system, but he never went to the store to talk to a manager about his situation.

The claimant filed for unemployment insurance benefits effective August 7, 2011, after a coworker told him that he had been terminated. The claimant was considered to have quit when he did not report to work and stopped communicating with the employer.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). The claimant stopped reporting to work after May 23 and stopped calling the employer after June 24. It was the claimant's duty to maintain communication with the employer. If the call-in line no longer was accepting the claimant's calls, he should have called in using the store phone number or stopped at the store and spoken to a manager. He voluntarily quit employment by failing to report to work or maintain communication with the employer. Even if the separation was considered a discharge, it would be for misconduct based on the claimant's excessive unexcused absenteeism.

DECISION:

The unemployment insurance decision dated September 2, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs