

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH E ROBERTS**

Claimant

**APPEAL NO. 15A-UI-10785-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 08/23/15**

**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Kenneth Roberts filed a timely appeal from the September 18, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Roberts voluntarily quit the employment on June 18, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 9, 2015. Mr. Roberts participated. Ryan Oshel represented the employer and presented additional testimony through Marilyn Powers. Exhibits A, B and C were received into evidence.

**ISSUE:**

Whether Mr. Roberts separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kenneth Roberts was employed by Wal-Mart as a part-time people greeter at the employer's Windsor Heights store from December 2014 and last performed work for the employer in May 2015. Store Manager Ryan Oshel was Mr. Roberts' supervisor. In May 2015, Mr. Roberts told Mr. Oshel that he needed to return to his home state of Oregon for medical attention. Mr. Roberts advised the employer that it was necessary for him to go to Oregon for the medical attention, rather than seek medical attention in Iowa, due to insurance reasons. Mr. Roberts has a diagnosis of chronic pain syndrome related to back issues. Mr. Roberts' HMO coverage did not extend to Iowa. Mr. Roberts needed to go to Portland, Oregon for an annual wellness checkup. Though Mr. Roberts had not worked for Wal-Mart long enough to qualify for a leave of absence under the employer's work rules, Mr. Oshel approved a short leave not to exceed three weeks. Toward the end of May, Mr. Roberts commenced the leave with the understanding he was to make contact with the employer within three weeks to indicate that he was back in the Des Moines area and available to return to the employment.

Mr. Roberts did indeed travel to Oregon for an annual wellness evaluation. Mr. Roberts had medical appointments on June 9, 10, and 12, 2015. In connection with those appointments, the

medical provider referred Mr. Roberts for dental care. Mr. Roberts realized he would not be able to return to work at the end of the three-week period approved by the employer. On or about June 12, 2015, Mr. Roberts telephoned the Windsor Heights Wal-Mart and spoke to Mr. Oshel. Mr. Roberts told Mr. Oshel that he was unable to return to work and needed to stay longer in Oregon. Mr. Oshel told Mr. Roberts that Wal-Mart could not approve any additional time off, that the employer would be removing Mr. Roberts from the payroll system, and that Mr. Roberts could reapply if and when he returned to the area. The employer had been pleased with Mr. Roberts' work. Mr. Roberts had not provided the employer with any medical documentation to support the initial request for time off and did not provide the employer with any medical documentation to support the need for additional time off. The employer removed Mr. Roberts from its payroll system effective June 18, 2015.

Mr. Roberts remained in Oregon to complete medical and dental evaluation and treatment. Mr. Roberts had an additional medical appointment on June 29, 2015. Mr. Roberts had dental appointments on July 13 and 29, 2015.

Mr. Roberts returned to Iowa on August 1, 2015. Upon his return to the Des Moines area, Mr. Roberts stopped in at the Windsor Height Wal-Mart and spoke with Mr. Oshel. Mr. Oshel told Mr. Roberts that the store had an opening for a people greeter. Mr. Roberts said he would consider whether to reapply. Mr. Roberts did not reapply or make further contact with the employer. Mr. Roberts subsequently returned to Oregon.

Mr. Roberts established a claim for unemployment insurance benefits that was effective August 23, 2015. Wal-Mart is the sole base period employer for purposes of that claim.

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

Iowa Code § 96.5-1-f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence in the record indicates that Mr. Roberts commenced an approved leave of absence in May 2015 and did so for compelling personal reasons. Those reasons were the need to return to Oregon for medical evaluation so that medical evaluation would be covered by Mr. Roberts' insurance. Mr. Roberts advised the employer of his compelling personal reasons for the leave of absence. The evidence does not establish that a doctor advised Mr. Roberts to commence the leave of absence. The weight of the evidence indicates that Mr. Roberts was unable to return to the employment at the time designated by the employer because his health care provider referred him for additional treatment. The additional treatment involved dental appointments and at least only additional medical appointment. The most recent medical appointment for which Mr. Roberts has provided documentation occurred on June 29, 2015. The most recent dental appointment for which Mr. Roberts had provided documentation occurred on July 29, 2015. The weight of the evidence indicates that Mr. Roberts continued to have compelling personal reasons for not returning to the employment through July 29, 2015 and for the additional brief period it would take to return to Iowa. However, the absence due to compelling personal reasons well exceeded 10 working days. When Mr. Roberts finally returned to the Des Moines metropolitan area at the beginning of August 2015, he made contact with the employer, but not for the purpose of requesting his job back. The employer specifically referenced that the employer had a position available and invited Mr. Roberts to apply. Mr. Roberts deferred a response and then elected not to make further contact with the employer. Mr. Roberts then returned to Oregon. Mr. Roberts loses credibility when he asserts that he had to return to Oregon because there was no work available in the Des Moines metropolitan area.

The weight of the evidence establishes a voluntarily quit that was without good cause attributable to the employer. Wal-Mart's account will not be charged for benefits.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because Wal-Mart is the sole base period employer and has been relieved of liability for benefits, there are no other base period wages upon which reduced wages might be based. Accordingly, Mr. Roberts is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**DECISION:**

The September 18, 2015, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs