

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD E JONES

Claimant

APPEAL NO. 12A-UI-04009-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/04/12

Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 5, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on May 9, 2012 in Des Moines, Iowa. Claimant participated. Employer did not appear and did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time night stocker from February 2002 through March 7, 2011 when he called in to report his absence due to illness. Assistant Manager Albert yelled at him and said he was going to fire him. Claimant became upset and quit. Albert had gotten "in his face" in December 2010 when he was working and told him he was not working fast enough. Claimant reported his concern to shift manager Andy and was told he was not working fast enough (60 boxes an hour). When claimant was hired he was not given a quota.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene name-calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee.

Albert’s verbal abuse created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The April 5, 2012 (reference 01) decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible and the benefits withheld shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css