

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE E KONIGSMARK
Claimant

APPEAL NO. 11A-UI-07926-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/08/11
Claimant: Appellant (2-R)

Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

Denise Konigsmark filed a timely appeal from the June 8, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 15, 2011. Ms. Konigsmark participated. The employer did not participate. After the hearing record had closed, the administrative law judge received written notice the employer had filed on July 14, 2011, to indicate the employer was waiving its participation in the hearing. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Konigsmark separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Denise Konigsmark was employed by Wal-Mart as a part-time sales associate from 2009 until May 11, 2011. For most of the employment, Ms. Konigsmark had worked 32 hours per week and worked a Friday-through-Monday work schedule. A few weeks prior to her separation from the employment, Ms. Konigsmark notified the employer that she would no longer be available to work as many hours. Ms. Konigsmark had enrolled in six semester hours of college coursework for the summer and wanted to shift her focus to her studies. Ms. Konigsmark had decided to leave the employment at the end of the summer, when she started attending college full-time. The employer had some preliminary discussion with Ms. Konigsmark about moving to a different department to get fewer hours, but the discussion was fairly minimal.

On May 5, Ms. Konigsmark decided to push forward with the discussion about reducing her work hours. Ms. Konigsmark submitted written notice to the employer that from that point forward she would only be available for 16 to 20 hours per week and would only be available to work on Sunday and Monday. The employer was not willing to accommodate the change in availability.

On May 8, Mothers' Day, Ms. Konigsmark spoke further with an assistant manager about her plan to reduce her hours in the summer and then quit. The assistant manager told Ms. Konigsmark that he thought she would be better off quitting, rather than reducing her hours and leaving at the end of the summer. Ms. Konigsmark indicated that she wanted to stay through the end of the summer and help with training her replacement. The employer made it clear that the employer expected the employment to end *that day*. Ms. Konigsmark asked whether she was being fired. The assistant manager assured her that she was neither being fired nor quitting, but that it was a "mutual termination." The employer provided Ms. Konigsmark with a "farewell" carnation. Ms. Konigsmark asked whether she could say goodbye to coworkers before she left and the employer approved that. So the employment ended.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in the record establishes that Ms. Konigsmark was discharged from the employment on May 8, 2011. Though Ms. Konigsmark had expressed a desire to cut back her hours, and had expressed an intent to quit at some point at the end of the summer, Ms. Konigsmark had not notified the employer of any date certain when she intended to leave the employment. Instead, on May 8, Ms. Konigsmark specifically told the employer that she wanted to continue in the employment. At no point did Ms. Konigsmark tell the employer that she was quitting the employment if the employer failed to accommodate her requested change in availability. It was the employer, not Ms. Konigsmark, who insisted that the employment relationship be severed on May 8, 2011 and the employer who made certain that Ms. Konigsmark was out the door for good that day.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The evidence in the record fails to establish any misconduct on the part of Ms. Konigsmark. Ms. Konigsmark was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

Ms. Konigsmark's change in established work availability does raise the issue of whether Ms. Konigsmark has met the work availability eligibility requirements since she established her claim for benefits. This matter will be remanded to the Claims Division for investigation of that matter. Ms. Konigsmark has the option of applying for "department approved training" status and may want to pursue that by contacting her local Workforce Development Center.

DECISION:

The Agency representative's June 8, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter is remanded for determination of whether the claimant has been available for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw