

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON M THOMPSON
Claimant

APPEAL NO. 12A-UI-05981-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/29/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 18, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 18, 2012. The hearing could not be completed at that time and was rescheduled for and finished on June 26, 2012. The claimant participated. The employer participated by Brandy Markson, assistant manager. The record consists of the testimony of Sharon Thompson; the testimony of Brandi Markson; and Claimant's Exhibits A through H.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time grocery salesperson at the employer's store in Davenport, Iowa. The claimant was hired on June 28, 1999. Her last day of work was April 17, 2012.

On April 17, 2012, the store was very busy and the claimant had a number of different tasks to accomplish. The co-manager, an individual named Tony, came up to the claimant and asked her to do a different job than the one she was doing. The claimant was intimidated by Tony and felt that he was frequently angry with her. He would puff out his chest; clench his jaw; and his face would get red. The claimant saw out of the corner of her eye that the store manager, Mike, was coming down the aisle. She was hopeful that he would see how Tony acted. But when Mike approached the claimant and Tony, Tony changed his demeanor. This upset the claimant and she went to lunch. She had what she described as a panic attack. She then called her employer and said that she would not be returning to work. Someone offered to clean out her locker for her, but the claimant said she only had items belonging to Wal-Mart such as pens.

The claimant attempted to get in touch with Mike several times. He did not return her calls. The claimant wanted her job back. The employer considered the claimant to have voluntarily quit because she walked off the job. She was formally separated from Wal-Mart on May 8, 2012.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.25(6) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

. . . .

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

The evidence in this case established that it was the claimant who initiated the separation of employment. She decided not to return to work after her lunch break after an unpleasant encounter with one of her supervisors named Tony. She told the employer that she was not coming back. The employer did not terminate the claimant. The claimant made the decision to sever the employment relationship. The issue, then, is whether the claimant left for 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.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She voluntarily quit her employment on April 17, 2012, for what she alleged to be a hostile work environment. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. "Good cause" for leaving employment must be that which is reasonable to the

average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The claimant left her job because she felt intimidated by Tony, and in the past, another supervisor named Mary. The claimant felt that Tony was a jerk and on April 17, 2012, she had a particularly difficult encounter with him, which left her “scared to death.” There is no evidence that Tony threatened the claimant physically. Brandi Markson, who also worked with Tony, did not have the same experience with him and was unaware of any other complaints about him.

Although there are circumstances where a supervisor’s conduct can cause a hostile work place, there is insufficient evidence in this record to support that conclusion. There appears to be a personality conflict between the claimant and Tony, and the claimant may have been overly sensitive to his statements. His managerial style may not be optimal, but that does not make the workplace hostile. No other employee corroborated the claimant’s testimony about Tony. In addition, the claimant asked for her job back, which is further evidence that the workplace was not intolerable, even to the claimant. The administrative law judge concludes that the claimant has not sustained her burden of proof to show a hostile workplace. Benefits are denied.

DECISION:

The representative’s decision dated May 18, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw