

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELBY BEHREND

Claimant

APPEAL NO: 09A-UI-04580-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/06/08

Claimant: Appellant (3)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Kelby Behrend (claimant) appealed an unemployment insurance decision dated March 10, 2009, reference 02, which held that he quit his part-time employment with Wal-Mart Stores, Inc. (employer) without good cause but was monetarily eligible for unemployment insurance benefits based on wages with other employers. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2009. The claimant participated in the hearing. The employer participated through Jay Bickford, Co-Manager and Scott Berryman, Assistant Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time overnight stocker from September 13, 2008 through December 9, 2009 when he was considered to have abandoned his job after repeated no-call/no-shows. Assistant Manager Scott Berryman advised the claimant in October 2008 that the employer would not need an overnight stocker in the deli department much longer. The claimant would be moved to a different department which is common in this type of business.

The claimant's last day of work was November 22, 2008 and he called in a couple times after that when he simply stopped reporting. He testified he quit because his hours were cut from 40 hours per week to eight. Mr. Berryman transferred to days and a new assistant manager named Mikey took his place on the night shift. The claimant asked Assistant Manager Mikey about working other hours and was told that he had to work his schedule. He never contacted any other member of management or human resources about getting scheduled in a different

department. However, this time of year was the employer's busiest time and the employer was paying a lot of overtime, so there were plenty of hours available for overnight stockers.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or report to work after December 5, 2008.

871 IAC 24.25(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was deemed a voluntary quit on December 9, 2008 after multiple days of no-call/no-shows. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. It appears the claimant was not scheduled for his full-time hours due to an oversight as a result of a change in management. The claimant merely had to talk to human resources or another member of management but failed to do so. The employer has over 400 employees and each employee bears the responsibility of correcting any problems with their own schedules when a mistake is made. The claimant's separation was not attributable to the employer and benefits are denied.

DECISION:

The unemployment insurance decision dated March 10, 2009, reference 02, is modified in favor of the respondent. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs