

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M THOMAS
Claimant

APPEAL NO. 08A-UI-06578-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 06/15/08 R: 01
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Lisa M. Thomas (claimant) appealed a representative's July 7, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2008. The claimant participated in the hearing. Nels Nelson appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on November 11, 2003. She worked full time as a clerk at the employer's Council Bluffs, Iowa, store. Her last day of work was June 13, 2008.

The claimant frequently worked a 2:00 p.m. to 11:00 p.m. schedule, and frequently worked in the can return area. On June 13 the claimant had worked in the can area from about 2:00 p.m. to 4:00 p.m., and was then on a front register until about 5:45 p.m. While she was in the can area, there had been a customer who had become upset with her and who later complained to the store management that the claimant had been rude. Mr. Nelson, an assistant manager, and another manager pulled the claimant off the register at about 5:45 p.m. to discuss the incident before the claimant went on her lunch break. They advised the claimant that she needed to be more careful in how she came across to customers, and Mr. Nelson indicated that it might be good for the claimant to not work in the can area for a period of time, as customers could become upset with some frequency in that area if they were displeased with the employer's return policies.

When the claimant left from the discussion, she determined she was going to end her employment with the employer, as she felt she had been harassed. She therefore did not return after her lunch break and did not call or return to work for her scheduled shifts on June 14,

June 15, June 16, and June 17. The employer then determined she had quit by job abandonment under the employer's three-day no-call/no-show policy.

The claimant felt she had been previously harassed due to an insensitive comment made by a customer service manager when the claimant took a day off in March for her grandfather's funeral, due to being required to acknowledge an attendance report with which she disagreed in January 2008, and a comment made by a customer service manager in about June 2007 questioning the legitimacy of some absences claimed as due to illness. The claimant had not complained to anyone with the employer's management or human resources as to any belief she was being subjected to harassment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973).

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005); Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer." Under this logic, if in the alternative the claimant demonstrates that the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe, there would be no need for a separate showing of notice by the claimant to the employer; if the employer was already aware of an obvious problem, it already had the opportunity to address or resolve the situation. There was no obvious intolerable working condition here, and the

claimant did not provide the employer with the necessary notice and opportunity. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's July 7, 2008 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of June 13, 2008, benefits are withheld until such time as 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css