

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH E SAMPLES

Claimant

APPEAL NO. 12A-UI-12019-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 09/16/12

Claimant: Appellant (2)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Judith Samples, filed an appeal from a decision dated October 3, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 2, 2012. The claimant participated on her own behalf and with Robin Evans. The employer, Wal-Mart, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Judith Samples was employed by Wal-Mart from July 26, 2006 until September 13, 2012 as a full-time cashier. She is also a recipient of social security benefits. In August 2012 the Social Security Administration notified her she would not be receiving her September 2012 payment because of excessive earnings.

Her supervisor Robin Evans, offered to rent her a room for a couple of months and Ms. Samples agreed. When the employer learned of the arrangement management said it was against the no fraternization policy and on those occasions when both Ms. Evans and Ms. Samples were scheduled to work together, the claimant would have to do stocking.

The claimant maintained she was not able to do many aspects of the stocking duties because of her age and health but at no time did she discuss this with management, nor did she get documentation from a physician about her limitations. Instead she elected to quit and notified Assistant Manager Bobbie Smith she was quitting on September 13, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The administrative law judge feels the claimant could have taken more initiative in discussing her concerns and exploring other options with management. Instead she simply accepted the ruling and quit. But there is no question there was a change in the contract of hire. She was a cashier and then was expected to do heavy physical work as a stocker on the days when she and her landlady/supervisor worked the same shift. Under the provisions of the above Administrative Code section, this is a voluntary quit with good cause attributable to the employer and the claimant is qualified.

DECISION:

The representative's decision of October 3, 2012, reference 01, is reversed. Judith Samples is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs