IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROY L LARSON
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 11A-UI-08059-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/22/11
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Roy Larson filed a timely appeal from the June 15, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 14, 2011. Ms. Larson participated. Willie Hauff, assistant manager, represented the employer.

ISSUE:

Whether Mr. Larson separated from the employment for a reason that disqualifies him for unemployment insurance benefits. He did.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roy Larson was employed by Wal-Mart as a full-time stock associate/cart pusher from August 2010 until May 21, 2011, when he voluntarily quit rather than receive a reprimand and continue working. On May 21, 2011, Mr. Larson got into a dispute with a member of management about prioritizing his work duties. During that discussion, the management team noticed that Mr. Larson's tongue was pierced and that he was wearing a "barbell post" through his tongue. The employer's dress code specifically prohibited employees from sporting anything other than a clear "spacer" if they had a pierced tongue. Mr. Larson was aware of the written policy prior to appearing for work that day with a non-conforming barbell post in his tongue.

The management team offered Mr. Larson three choices. He could leave the workplace and return with a clear spacer that conformed to the written dress code. He could continue to work, but receive written discipline for violating the dress code. He could remove the piercing. Mr. Larson rejected all three options. Mr. Larson declined to leave because he lacked a means to get home and lived 30 minutes away. Mr. Larson initially indicated that he would remove the piercing, but then declined to remove the piercing after he erroneously concluded that the employer expected him to use dirty pliers from the automotive area. Mr. Larson was unwilling to accept the written discipline and continue working. Mr. Larson was not far enough along in the employer's progressive discipline to be subject to discharge based on the proposed discipline.

Mr. Larson insisted that the management team fire him from the employment. The management team made it clear that it was not going to do that. Mr. Larson elected at that point to separate from the employment and left the workplace.

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 Mr. Larson voluntarily quit and was not discharged from the employment. The employer provided Mr. Larson with options that would allow him to continue working that day. One of those options was to remove the piercing. The other option was to accept a written reprimand for violation of the dress code and continue working. The employer provided Mr. Larson with the third option of leaving work long enough to obtain a clear spacer that conformed to the written dress code. The employer made it clear to Mr. Larson that they did not intend to discharge him from the employment in connection with the incident. Mr. Larson rejected the options the employer proposed, all of which would have allowed him to continue in the employment. Mr. Larson ultimately insisted on separating from the employment and did, in fact, initiate a separation from the employment.

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.

A worker who leaves employment in response to a reprimand is presumed to have voluntarily quit without good cause attributable to the employment. See 871 IAC 24.25(28).

The evidence establishes that Mr. Larson did in fact quit the employment in response to a proposed reprimand. The employer reasonably expected Mr. Larson to conform to the dress code provision regarding tongue piercing. Mr. Larson unreasonably declined to accept any of the options provided by the employer and elected to separate from the employment instead. Mr. Larson's quit was without good cause attributable to the employer. Mr. Larson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Larson.

DECISION:

The Agency representative's June 15, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw