

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL M GAY
Claimant

APPEAL NO. 11A-UI-08248-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

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

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 16, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on July 18, 2011. Claimant participated personally. The employer participated by Mr. Brian Becker, Assistant Manager; Mr. Charles Urwin, Assistant Manager, and Ms. Delores Orozo.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: April Gay was employed by Wal-Mart Stores from July 2001 until May 17, 2011 when she voluntarily left employment. Ms. Gay last held the position of full-time grocery stocker and was paid by the hour. Her immediate supervisor was Brian Becker.

Ms. Gay left her employment with Wal-Mart Stores at the conclusion of her approved maternity leave of absence. The claimant had been fully released to return to work but elected not to do so. The claimant indicated that she was leaving to take care of her children and possibly continue her education.

The claimant's last day of work was approximately March 1, 2011. At that time she began a medical leave of absence that had been approved by the company. Ms. Gay had previously held a supervisory position with Wal-Mart stores but had been removed from that position due to ongoing issues with her attendance. Ms. Gay elected to move to the position of grocery stocker. Claimant remained in that position approximately six weeks before beginning her medically approved leave of absence. Work continued to be available to Ms. Gay at the time she elected to resign her position.

It is the claimant's position that she left her employment with Wal-Mart stores because she had been "discriminated against" and because the employer had previously created a "hostile work environment."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

Iowa Code § 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.

An individual who leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

The administrative law judge concludes based upon the totality of the evidence in the hearing record that the claimant's primary reason for leaving employment on or about May 17, 2011 was her personal desire to remain home or to pursue educational pursuits. The claimant had held the position of grocery stocker for a substantial period of time after relinquishing her previous supervisory position and the claimant had not indicated to the employer that she would be quitting her employment if areas of concern were not addressed. The company has an open door policy which allows employees to go up the chain of command if they feel their immediate supervisor or supervisors are not adequately handling their complaints.

While it appears the claimant had some difficulty working with an hourly employee in the past, her difficulty with that employee was not the basis for the claimant being removed from her supervisory position. The claimant was previously removed because of repetitive attendance issues. The claimant accepted the change for a substantial period of time before quitting her job on May 17, 2011. The evidence indicates that at the time of leaving the claimant indicated she was leaving to stay home and care for her children or to pursue further education.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to the employer for leaving employment is not a subjective test as to whether the employee themselves feel they have good cause but an objective test as to whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988). See also O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The administrative law judge concludes that the evidence in the record does not establish that Wal-Mart intentionally discriminated against the claimant or that the claimant was required to work in an intolerable or hostile work environment. While the claimant's reasons for quitting may have been good from her personal viewpoint, they were not good cause reasons attributable to the employer. Unemployment insurance benefits are denied.

DECISION:

The representative's decision dated June 16, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs