

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OLSON, DANIEL, R
Claimant

APPEAL NO. 11A-UI-08050-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/15/11
Claimant: Respondent (4-R)

Iowa Code § 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 7, 2011, reference 01, decision that allowed benefits and that concluded the employer's account could be charged for benefits. After due notice was issued, a hearing was held on July 14, 2011. Claimant Daniel Olson did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Assistant Manager Josh Uhde represented the employer. Exhibit One was received into evidence.

ISSUES:

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

Whether the employer is liable for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Daniel Olson was employed at the Mason city Wal-Mart as a part-time hardware associate from April 2010 until May 14, 2011. On May 14, Mr. Olson was summoned repeatedly to cashier and ignored the multiple pages. Assistant manager Josh Uhde located Mr. Olson and told him he was needed at the front of the store. Mr. Olson refused to go to the front of the store. Mr. Olson wanted instead to continue to stock shelves. Mr. Olson became argumentative on the sales floor. Mr. Uhde told Mr. Olson that he was not going to argue in front of customers and Associates. Mr. Uhde told Mr. Olson either to go to the front of the store in cashier or come back to the office to continue the conversation. Mr. Uhde then went to the office and waited for Mr. Olson. After several minutes, when Mr. Olson did not appear at the office, Mr. Uhde went looking for Mr. Olson and learned that he had clocked out and left. Mr. Olson left at 9:00 p.m., but was scheduled to work until 11:00 p.m. No one had authorized Mr. Olson to leave early.

At the time of the next schedule shift, Mr. Olson appeared at the workplace and attempted to clock in. Shift manager Jeff van der Sluis spoke with Mr. Olson and told him that the employer

deemed him to have quit. The shift manager had to repeat the statement a few times before Mr. Olson departed.

This was not the first time Mr. Olson had left work early without permission. Mr. Olson had done the same thing on November 20 and 26, 2010 and had received a verbal reprimand for the conduct. In addition in December 2010, Mr. Olson received two reprimands for three instances when he returned late from his lunch break.

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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

Mr. Olson failed to appear for the hearing and thereby failed to present any evidence to support the allegation that he was discharged from employment or that he voluntarily quit for good cause attributable to the employer. The weight of the evidence in the record establishes that the employer reasonably concluded on May 14, 2011 that Mr. Olson had voluntarily quit when he walked off the job in the middle of the shift.

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.

When a worker voluntarily separates from the employment rather than perform the work as directed, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(27).

When a worker quits in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

The weight of the evidence in the record establishes that Mr. Olson voluntarily quit the employment in response to being counseled by Mr. Uhde for his failure to go to the front and cashier and because he did not want to perform the work as instructed. Mr. Olson's voluntary quit was without good cause attributable to the employer. The employer's account will not be charged.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Mr. Olson is disqualified for benefits *based on wages earned through Wal-Mart* until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Olson remains eligible for reduced benefits based on base period wage credits from employment *other than* Wal-Mart, provided he has sufficient other base period wages. This matter will be remanded to the Claims Division for redetermination of Mr. Olson's eligibility for reduced benefits.

DECISION:

The Agency representatives June 7, 2011, reference 01, decision is modified as follows.

The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The employer's account will not be charged. The claimant is disqualified for benefits *based on wages earned through Wal-Mart* until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant remains eligible for reduced benefits based on base period wage credits from employment *other than* Wal-Mart, provided he has sufficient other base period wages. This matter is remanded to the Claims Division for redetermination of the claimant's eligibility for reduced benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs