

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA A IMRIE
Claimant

APPEAL NO. 11A-UI-11657-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/31/11
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 24, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 28, 2011. Claimant Amanda Imrie participated. Brian Howe, shift manager, represented the employer. Exhibits One, Two, and Three were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Amanda Imrie was employed by Wal-Mart as a full-time sales associate from 2005 until August 2, 2011, when she voluntarily quit. During the last year and a half of the employment, Ms. Imrie worked in the photo center as a photo specialist. The employer did not have a photo department manager for more than a year at the time Ms. Imrie quit the employment. Over time, the employer had transferred the actual photo manager duties to Ms. Imrie. These included ordering supplies, supervising other employees, and performing routine maintenance on the equipment. Despite the change in duties, the employer had left Ms. Imrie's wage and title unchanged. The electronics department manager was supposed to function as the new photo center manager, but did not perform the associated duties. A few months before she quit, Ms. Imrie attempted to stop doing the ordering and leave those duties for the electronics department manager. The employer responded by reprimanding Ms. Imrie for alleged insubordination. Ms. Imrie was willing to perform the photo center manager duties so long as she received the title and wage increase that had formerly been associated with the position. On August 2, 2011, Ms. Imrie notified the employer she was quitting because she had continued to be required to perform the photo center manager duties without being given a raise or the title of photo center manager. At the time of the quit, Ms. Imrie had been performing the new duties for a year.

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.

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.

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence does not establish intolerable or detrimental working conditions. The evidence does not establish a quit in lieu of discharge. The evidence establishes a voluntary quit based on a change in the conditions of the employment, but the changes occurred a year prior to the quit. Ms. Imrie did not quit at the time the duties changes. Ms. Imrie initially acquiesced in the change in duties. Several months later, Ms. Imrie attempted to go back to prior duties. The length of time she had continued to perform the changed duties amounted to acquiescence in

the changed duties. After the reprimand for failure to perform some part of those duties, Ms. Imrie continued to perform the new duties at least a few more months. This, too, amounted to acquiescence in the changed duties. The administrative law judge must conclude that Ms. Imrie voluntarily quit for personal reasons and not for good cause attributable to the employer. Ms. Imrie is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Imrie.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's August 24, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw