

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS LECLERE
Claimant

APPEAL NO: 12A-UI-15279-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/25/12
Claimant: Appellant (4)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Thomas LeClere (claimant) appealed an unemployment insurance decision dated December 19, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Wal-Mart Stores, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2013. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from his part-time employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time stocker from August 15, 2012 through November 13, 2012. He voluntarily quit by failing to return to work after that date. The claimant quit because he believed he was going to be fired due to attendance points, although he admitted the employer never gave him any warnings to advise him how many points he had been assessed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code § 96.6-2. He voluntarily quit because he thought he was going to be fired due to attendance points but there was no evidence the employer had taken affirmative steps to discharge him. The claimant testified he was not given any warnings by the employer advising him how many points he had. The claimant's separation from employment was without good cause attributable to the employer and this employer's account is not subject to charge.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27. In the case herein, the claimant is monetarily eligible and his benefits do not need to be recalculated since the wages he earned with the employer are not in his base period.

DECISION:

The unemployment insurance decision dated December 19, 2012, reference 01, is modified in favor of the appellant. The claimant voluntarily quit his part-time employment for disqualifying reasons and the employer's account will not be charged. He qualifies for unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs