

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAY L WILLIAMS

Claimant

WAL-MART STORES INC

Employer

APPEAL 15A-UI-11564-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/15

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 8, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2015. Claimant participated. Employer participated through store manager, Rose Hankey.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant store manager from June 13, 2013, and was separated from employment on May 20, 2015, when she quit.

Claimant was scheduled to work April 24, 2015, but she worked only half of the day. Claimant had permission to work only half of the day. Claimant was also scheduled to work on April 25, 2015, but she did not work that day. Claimant thought she had arranged for someone to work for her, but the person she thought was supposed to work did not work. Managers have the freedom to switch their schedule if they need to as long as the maintenance of the store is in order. On April 25, 2015, claimant was contacted by phone and text by Ms. Hankey about when she was going to work that day. Claimant and Ms. Hankey texted back and forth regarding this issue, and there was some confusion as to which day each person was referring too. They agreed to meet on April 26, 2015 in person to discuss the issue. On April 26, 2015, claimant and Ms. Hankey spoke about what happened on April 25, 2015. During this discussion, they also discussed the schedule for the week. Claimant testified she was scheduled for 78 hours, but Ms. Hankey was not sure how many hours claimant was scheduled to work. The store was getting ready for a store visit and claimant had to make up the 13 hours she had missed. After that week, claimant only worked her regular schedule through her last day. Claimant did not complain about the hours scheduled. During this discussion, claimant verbally told Ms. Hankey she was going to resign. Claimant stated that she wanted more time with her family. Claimant also said she did not feel that the other managers have the same sense of urgency that she did. Claimant did not say anything about a lack of managers during the meeting (the employer had

9 managers of 11 managers employed at that time). Claimant followed-up her verbal resignation with a letter of resignation on April 27, 2015. In the letter, claimant stated she wanted to spend time with her family. Claimant also stated the past couple of years have been very rewarding. Claimant did not mention a lack of managers as a reason for resigning. In claimant's resignation, she gave May 20, 2015 as her last day she was going to work.

Claimant was never disciplined for missing work on April 25, 2015. There was work available for claimant if she had not resigned. Ms. Hankey accepted claimant's resignation on behalf of the employer. When claimant was hired, the work scheduled was three days on and then three days off, but in June 2014, the schedule changed to four days on and then two days off.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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.

Iowa Admin. Code r. 871-24.25(37) and (18) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted

such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

(18) The claimant left because of a dislike of the shift worked.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant was hired initially working on a three day on, three day off schedule. However, in June 2014, the schedule changed to four days on, then two days off, which was the schedule when claimant resigned. Claimant verbally resigned on April 26, 2015, and then followed up her verbal resignation with a written letter of resignation on April 27, 2015. Claimant's argument that she resigned because of the lack of managers employed by the employer and the amount of hours she was to work is not persuasive. Ms. Hankey testified claimant never mentioned the lack of managers or the amount of hours she was working as the reasons for her resigning. Ms. Hankey's testimony is corroborated by claimant's resignation letter (Ms. Hankey read the resignation letter into the record and claimant agreed that is what the letter stated). Claimant's resignation letter did not state anything about a lack of managers working or too many hours. Furthermore, even if claimant had to work a longer schedule the week of April 26, 2015, it was an aberration as claimant testified after that week she was back to her four day on, two day off regular schedule until the end of her employment. Claimant had worked this schedule (four days on, two days off) since June 2014, thus acquiescing to the change from three days on, three days off that she was initially hired under.

Claimant's decision to quit because she did not agree with the store manager about the number of managers employed and the hours she as scheduled was not for a good-cause reason attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The October 8, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs