

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATIE E SEALS
Claimant

APPEAL NO. 08A-UI-04062-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

OC: 03/09/08 R: 02
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Katie Seals filed a timely appeal from the April 17, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 12, 2008. Ms. Seals participated. Deb Borwick, Human Resources Lead, represented the employer. Exhibit A was received into evidence.

ISSUE:

Whether the claimant voluntarily quit, was laid off or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Katie Seals commenced her part-time employment with K-Mart on August 10, 2006 and worked as a cashier. In November 2007, Ms. Seals notified the employer that she was changing her work availability and reduced her availability to three days per week. Up to this point, Ms. Seals had averaged 20 hours per week. After Ms. Seals restricted her availability her weekly hours were as follows. The dates referenced are the last day of the applicable week:

| | |
|----------|------------|
| 11/10/07 | 8 hours |
| 11/17/07 | zero hours |
| 11/24/07 | 10.5 hours |
| 12/1/07 | zero hours |
| 12/8/07 | 5 hours |
| 12/15/07 | 10 hours |
| 12/22/07 | zero hours |
| 12/29/07 | 5.75 hours |
| 1/5/08 | 6 hours |
| 1/12/08 | 5 hours |
| 1/19/08 | 5 hours |
| 1/26/08 | 5 hours |

Ms. Seals last performed work for K-Mart on January 20, 2008, when she worked the five hours recorded for the week ending January 26, 2008. At the end of January, Ms. Seals called Deb Borwick, Human Resources Lead, and told Ms. Borwick that she had broken up with her boyfriend, had lost her transportation, and would not be able to come to work for a while. Ms. Borwick told Ms. Seals that she would need to appear the following week for some training and Ms. Seals indicated she would appear. Ms. Borwick waited four weeks to hear from Ms. Seals. Ms. Borwick then attempted to reach Ms. Seals by telephone, but encountered a number that had been disconnected. Ms. Borwick then documented that the employment had ended due to job abandonment. Ms. Seals did not make further contact with the employer after the telephone conversation at the end of January.

On February 10, 2008, Ms. Seals was traveling in Wyoming when she was in a motor vehicle accident. After Ms. Seals returned to Iowa, her doctor diagnosed a compression fracture in her spine. The doctor restricted Ms. Seals from lifting more than ten pounds and recommended that she not lift any weight. The doctor prescribed a back brace and pain medication. The doctor referred Ms. Seals for physical therapy. Ms. Seals went to physical therapy once a week for four weeks. Ms. Seals did not go more often because she lacked transportation. Ms. Seals did not return to see her doctor after the initial visit when she returned from Wyoming. Ms. Seals ceased taking the prescription pain medication when she ran out. Ms. Seals recently decided to no longer wear the back brace. Ms. Seals did not return to K-Mart after her accident because she did not think the employer would allow her to work with her restrictions. In December 2007, Ms. Seals commenced employment at Hampton Inn. This employment was very short term and ended at the beginning of January.

Ms. Seals established a claim for unemployment insurance benefits that was effective March 9, 2008. Ms. Seals received \$244.00 in benefits for the four-week period of March 9 through April 5, 2008.

K-Mart was Ms. Seals' sole base period employer. In other words, Ms. Seals' eligibility for unemployment insurance benefits is based on the wages she received from K-Mart.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

- d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

The weight of the evidence indicates that Ms. Seals voluntarily quit the employment and was neither discharged nor laid off by the employer. The weight of the evidence establishes that Ms. Seals notified the employer at the end of January that she lacked transportation and could not appear for work. The evidence establishes that Ms. Seals then failed to appear for a training session and made no further contact with the employer. The weight of the evidence does not support Ms. Seals' assertion that she contacted the employer weekly and/or went to the store weekly to check her hours.

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.

A person who separates from employment due to a lack of transportation is presumed to have voluntarily quit the employment without good cause attributable to the employer unless the employer has agreed to provide transportation. See 871 IAC 24.25(1).

The weight of the evidence indicates that Ms. Seals voluntarily quit the part-time employment due to a loss of transportation. The employer had not agreed to provide transportation. Ms. Seals also quit to address personal issues surrounding the break up with her boyfriend. The administrative law judge concludes that Ms. Seals voluntarily quit without good cause attributable to the employer. The employer's account will not be charged for benefits paid to Ms. Seals. Because K-Mart was Ms. Seals only base period employer, Ms. Seals is disqualified for unemployment insurance benefits until she has worked in and been paid wages equal to ten times her weekly benefit amount, provided she is then otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The evidence establishes that Ms. Seals has not met the able and available requirements of Iowa Code section 96.4(3) since she established her claim for benefits. The evidence indicates that Ms. Seals suffered personal injury that prevented her from being able to work. The evidence indicates that Ms. Seals was initially under the care of a medical practitioner, who

imposed medical restrictions, and that the medical restrictions had never been lifted. The medical restrictions were significant and prevented Ms. Seals from being able to engage in gainful employment. The evidence further indicates that Ms. Seals lacks transportation to get from her home in Ames to employment in Ames.

DECISION:

The Agency representative's April 17, 2008, reference 01, decision is affirmed. 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. The claimant has not met the able and available requirements of Iowa Code section 96.4(3) since she established her claim for benefits and is ineligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css