

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN STAVER
Claimant

APPEAL NO. 14A-UI-03033-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/23/14
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kevin Staver filed a timely appeal from the March 12, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on April 10, 2014. Mr. Staver participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Mr. Staver's voluntary quit was for good cause attributable to the employer. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kevin Staver was employed by Wal-Mart as a full-time frozen foods department worker from 1998 until February 10, 2014, when he voluntarily quit for personal reasons. Mr. Staver suffers from diabetes and suffers from associated urinary incontinence. Mr. Staver takes medication to address the incontinence issue and usually wears an absorbent undergarment to help with the incontinence issue. Mr. Staver did not wear an absorbent undergarment when he reported for work in February 9, 2014. Mr. Staver did not take an extra set of clothes with him to work, though his sister had advised him it would be wise to do so.

After Mr. Staver took a restroom break during the early morning hours of February 10, 2014, he experienced an incident of incontinence. Mr. Staver could feel that his clothing was wet, but did not look to see how wet or how noticeable his incontinence was. Another employee who regularly worked with Mr. Staver in the frozen food department, Forrest, told Mr. Staver that he needed to go home. Mr. Staver did not know whether the coworker meant that Mr. Staver needed to go home and change or whether the coworker meant something else. The coworker made a further statement to the effect that he was tired of looking at Mr. Staver. Mr. Staver was upset by the coworker's comments. Mr. Staver went to speak with the manager on duty, Ray. Ray was sympathetic to Mr. Staver's situation and explained that his father also suffered from urinary incontinence after suffering a heart attack. Mr. Staver told Ray that he felt he had no choice but to resign from the employment due to the embarrassment he felt. Mr. Staver left the workplace prior to the end of his shift.

Later in the morning on February 10, 2014, Mr. Staver returned to the workplace and asked personnel for a resignation form. Mr. Staver provided a written resignation and separated from the employment at that time.

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.

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 in the record indicates that Mr. Staver had an embarrassing experience during his shift on February 9-10, 2014. The embarrassing experience resulted from Mr. Staver's own actions. Mr. Staver knew he suffered from urinary incontinence, but elected not to wear an absorbent undergarment to work that day. Mr. Staver also elected not to keep an extra set of clothes to work in case of such accidents. Mr. Staver knew during the shift that his garments were wet with urine, but elected to carry on as if nothing had happened. Mr. Staver continued to work in the frozen food department in this condition. The coworker noticed the problem and pointed the problem out to Mr. Staver. While the coworker might have been more tactful about the situation, it was not unreasonable for the coworker to point out the problem. Mr. Staver worked with food and his condition at that point was unhygienic. In addition, it would have been contrary to the employer's interest in selling food to customers to have Mr. Staver continue to work in a food department in clothes wet with urine. The evidence indicates that there was nothing whatsoever sexual about the coworker pointing out Mr. Staver's wet clothing. The coworker suggested what a reasonable person would suggest under the circumstances, that Mr. Staver go home. The weight of the evidence indicates that the coworker merely wanted Mr. Staver to go home and change. The coworker had taken reasonable steps to bring the problem to the manager's attention. The coworker's actions, including the alleged comment that he was tired of looking of Mr. Staver did not rise to the level of intolerable and/or detrimental working conditions that would prompt a reasonable person to quit the employment. Mr. Staver unreasonably jumped to the conclusion that it was necessary for him to quit the employment.

Mr. Staver voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Staver is disqualified for benefits until he has worked in and been paid wages

for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Claims Deputy's March 12, 2014, 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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