

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOHAMED OUAHBI
Claimant

APPEAL NO: 09A-UI-03716-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02-08-09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 27, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Davenport, Iowa, before Administrative Law Judge Julie Elder on April 8, 2009. The claimant participated in the hearing. Ken Heili, Assistant Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time paper and chemicals department manager for Wal-Mart from October 20, 2004 to February 2, 2009. He received a verbal warning for not following directions August 12, 2008. On January 30, 2009, he received a written warning for failing to scan all merchandise in the feature tracking. One product will come in automatically but if it is not updated the employer will receive extra freight which causes extra work and less room in the backroom. The claimant refused to make a comment in the comment section or sign the warning. The claimant voluntarily quit February 2, 2009. He was upset about the warnings and felt they were unfair but his job was not in jeopardy as he still had a decision-making day and another incident before termination would occur and warnings drop off after one year. The claimant used to have three people in his department but at the time of separation he was the only one left and did not feel he could run the entire department by himself. He started looking for other work after the verbal warning and assumed he would be terminated eventually so he chose to voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant quit because he assumed his employment would be terminated even though he still had two disciplinary steps remaining before termination would occur. While he was upset about receiving a warning, he did not make any comments in the employee comment section of the warning and the employer was not aware the claimant was considering quitting. Although his department shrunk, others pitched in to help with different tasks but the claimant was not satisfied. Under these circumstances the administrative law judge cannot conclude the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits must be denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The February 27, 2009, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as 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 matter of determining the amount of the

overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css