

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH L POTTORFF
Claimant

APPEAL NO. 16A-UI-07140-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/29/16
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's June 16, 2016, decision (reference 01) that concluded Kenneth Pottorff (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 19, 2016. The claimant participated personally. The employer participated by Andrew O'Leary, Store Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on January 17, 2008, as a full-time overnight stocker. The claimant had been complaining to the employer for years about his workplace. He told the assistant managers and the support manager about pallets being left on the floor. Employees tripped over them and once a pallet landed on an employee's foot. The claimant complained about the cleanliness of the store and about expired products in the dairy section. Some items were six months out of date. The claimant told management that his health was suffering from the stress of the job and he was being stalked by a co-worker during work hours. The employer said it was looking into the issues but the issues were not presented to the store manager. The claimant's doctor told the claimant he should think about quitting but the claimant could not afford to quit. On April 13, 2016, the employer called the claimant into a meeting to investigate a threat of violence. The employer did not have an accusation against the claimant but questioned him anyway. The claimant quit work due to an intolerable work environment.

The claimant filed for unemployment insurance benefits with an effective date of May 29, 2016. The employer participated personally at the fact-finding interview on June 15, 2016, by Anthony Burgess. He did not have firsthand knowledge of the events leading to the separation.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of the intolerable conditions. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 16, 2016, decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs