

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M GRAVES

Claimant

APPEAL NO. 07A-UI-08464-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 08/05/07 R: 02
Claimant: Appellant (4)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jennifer Graves filed a timely appeal from the August 28, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 18, 2007. Ms. Graves participated. Todd Van Essen, Co-Manager, represented the employer.

ISSUES:

Whether the claimant voluntarily quit 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.

Whether the employer discharged the claimant once the claimant submitted her two-week notice.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Graves was employed by Wal-Mart as a full-time overnight stocker from April 2006 until August 3, 2007 when she told Assistant Manager Nate Powell that she was quitting the employment effective two-weeks after August 3. Ms. Graves did not care for Mr. Powell. Ms. Graves thought that Mr. Powell spoke down to her when he directed her work. Ms. Graves confined her conversation with Mr. Powell to answering yes or no to questions he posed. On more than one occasion, Mr. Powell attempted to explore and resolve the issues Ms. Graves had with Mr. Powell.

During the early morning hours of August 3, Mr. Powell asked Ms. Graves why she was "grouchy" with him and why she limited her conversation with him to answering yes or no to his questions. Ms. Graves told Mr. Powell that she behaved the way that she did because she did not like him. Ms. Graves told Mr. Powell that she thought he spoke to her as if she were stupid and that the way he spoke to women differed from the way he spoke to men. As an example of a prior instance of condescension, Ms. Graves cited a time when Mr. Powell had counseled her regarding her work by saying, "Is this the way you're supposed to do it?" Mr. Powell indicated that he wanted to speak to Ms. Graves further about her concerns and invoked the employer's

“open door” policy. Mr. Powell located a female support manager to join Mr. Powell and Ms. Graves for a conversation in the office.

Once Mr. Powell, Ms. Graves and the female support manager were in the office, Mr. Powell asked Ms. Graves why she did not like him and asked what he could do to fix the situation. Ms. Graves told Mr. Powell that he should quit talking to her like she was stupid. Mr. Powell denied that he did this. Mr. Powell added that he thought Ms. Graves had been rude toward him by refusing to converse with him beyond a yes or no response. Mr. Powell again asked Ms. Graves what he could do to remedy the situation. Ms. Graves told Mr. Powell that he could help her transfer to another store. Mr. Powell pointed out that Ms. Graves was not eligible for transfer under the employer’s policy because she had received a reprimand within the prior 12 months. Mr. Powell again asked what he could do to remedy the situation. Ms. Graves told Mr. Powell there was nothing he could do. Ms. Graves indicated that she was putting in her two-week notice of her quit. Mr. Powell indicated that the quit could be effective immediately. Mr. Powell produced exit interview paperwork to document the resignation and presented the exit interview document for Ms. Graves’ signature. Mr. Powell advised Ms. Graves that she was eligible to reapply for employment. Ms. Graves was angry and, therefore, did not read the exit interview document before she signed it. Ms. Graves told Mr. Powell to “go to Hell” as she exited the meeting.

Though Mr. Powell had sufficient authority to discharge Ms. Graves from the employment, Ms. Graves performed satisfactory work, had received only one prior reprimand, and had not progressed through the steps of the employer’s progressive discipline procedure. Mr. Powell quit Wal-Mart effective September 5 to join another retailer and did not testify for the hearing. The female support manager continues with Wal-Mart, may have limited English skills, and did not testify at the hearing.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Graves quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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. A 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. 871 IAC 24.25(37).

The greater weight of the evidence indicates that Ms. Graves voluntarily quit the employment. The greater weight of the evidence indicates that on August 3, Mr. Powell attempted to take steps to resolve a one-sided personality conflict with Ms. Graves. Mr. Powell did not have a conflict with Ms. Graves, but Ms. Graves had a conflict with Mr. Powell. The greater weight indicates that while Mr. Powell was engaged in trying to resolve the conflict, Ms. Graves refused to work toward resolution and announced her quit instead. The greater weight of the evidence indicates that Mr. Powell accepted and documented the voluntary quit. The greater weight of the evidence indicates that Mr. Powell elected to make the quit effective immediately. In other words, Mr. Powell discharged Ms. Graves in response to her announcement that was quitting in two weeks.

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.

The evidence indicates that Ms. Graves voluntarily quit due to a personality conflict with a supervisor. A quit for such a reason is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22).

Based on the evidenced in the record and application of the appropriate law, the administrative law judge concludes that Ms. Graves voluntarily quit the employment without good cause attributable to the employer.

871 IAC 24.26(12) provides as follows:

When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

The greater weight of the evidence indicates that Ms. Graves notified the employer of a quit that was to be effective two-weeks after August 3 or August 17. The greater weight of the evidence indicates that Mr. Powell terminated the employment immediately in response to the notice of the quit. Accordingly, Ms. Graves is eligible for benefits during what would have been the notice period, August 3-17, 2007. This period corresponds to the benefit weeks that ended August 11 and 18, 2007. However, effective August 19, 2007, Ms. Graves 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 may be charged for benefits disbursed for the notice period, but shall not otherwise be charged for benefits paid to Ms. Graves.

DECISION:

The Agency representatives August 28, 2007, reference 01, decision is amended in favor of the claimant as follows. The claimant voluntarily quit the employment without good cause attributable to the employer, effective August 17, 2007. Because the employer immediately terminated the employment when the claimant gave her two-week notice on August 3, the claimant is eligible for benefits for the benefit weeks that ended August 11 and 18, 2007.

Effective August 19, 2007, 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 may be charged for benefits disbursed for the two-week notice period, but shall not otherwise be charged for benefits paid to Ms. Graves.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs