

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

AMENDED

**Appeal Number: 06A-UI-02488-ET
OC: 01-29-06 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 2nd Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a decision dated February 17, 2006, reference 01, that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 20, 2006. The claimant participated in the hearing. Victoria Althoff, Co-Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having heard the testimony and examined the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales associate in the meat department for Wal-Mart from December 11, 1997 to February 2, 2006. On February 2, 2006, the claimant's supervisor, Tom Dudek, told the claimant he was not using the correct cart to move meat so the claimant reloaded the correct cart. Mr. Dudek then told the claimant he had some "shit to tell (him) that's going to make (him) mad" and proceeded to state he had other things to do rather than being there telling him what to do. The claimant was upset and went to Co-Manager Victoria Althoff. She asked him to finish stocking the meat and then she would meet with the claimant and Mr. Dudek. The claimant agreed they could talk in a while and returned to his work area and told Mr. Dudek he was back and Mr. Dudek said "that's nice" and "you can just go back to the office and do what you have to do." The claimant returned to Ms. Althoff and said Mr. Dudek yelled at him again and he needed to go home for a couple hours. Ms. Althoff again asked him to finish stocking the meat and then they could talk and she believed he went back to his work station but the claimant actually went home and returned to the store approximately two hours later. He spoke to the personnel manager about the situation and she said if he wanted to quit it was up to him. Ms. Althoff walked past the room and noticed the claimant inside and asked what was going on and the claimant said he "was done." The employer had continuing work available for the claimant had he not left his position.

The claimant has received unemployment insurance benefits since his separation from this employer.

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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). 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 was upset because Mr. Dudek told him to use a different stocking cart and he felt Mr. Dudek was rude when he spoke to him. The claimant then spoke to the employer who asked him to finish stocking the meat before the parties met to discuss the situation. The claimant returned a few minutes later to complain again and the employer again asked him to finish his task before they met to talk about the incident. The claimant then decided to go home, without permission, for about two hours before returning to talk to Personnel. While the claimant was upset about the situation and felt he was mistreated, the employer's request that he wait a short time before they discussed the

problem was not unreasonable. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). In this case the evidence shows the claimant was dissatisfied with his work environment on February 2, 2006, but was generally happy with his job and his supervisor prior to that date. While Mr. Dudek may have been rude to the claimant that day, the claimant did not give the employer sufficient time to resolve the problem before he chose to quit his job. Consequently, the administrative law judge must conclude the claimant has not met his burden of proving his leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 17, 2006, reference 01, decision is reversed. 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 claimant is overpaid benefits in the amount of \$1,107.00, however \$135.00 of this amount has already been set up on a separate issue leaving a balance of \$972.00.

je/tjc/tjc