

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HEATHER L DREISBACH
Claimant

APPEAL NO. 18A-UI-07849-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 06/24/18
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 11, 2018, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on December 17, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on August 10, 2018. Claimant Heather Dreisbach participated. Nicole Rowson represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant in connection with the claim that was effective June 24, 2018. Exhibits 1 through 4 were received into evidence.

ISSUE:

Whether Ms. Dreisbach separated from the employer for a reason that disqualifies her for benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Heather Dreisbach was employed by Walmart, Inc. as a part-time associate from August 29, 2017 and last performed work for the employer on December 14, 2017. Ms. Dreisbach began the employment as a lay-away associate and became a hardware associate in November 2017. Ms. Dreisbach left work early on December 14, 2017. Ms. Dreisbach was then absent from her scheduled shift on December 15, 2017 and provided proper notice to the employer of her need to be absent that day.

Ms. Dreisbach was next scheduled to work on December 17, 2017. However, Ms. Dreisbach did not make further contact with the employer after giving notice on December 15 of her need to be absent on December 15. Ms. Dreisbach assumed, in light of her previous accumulation of attendance points, that her absence on December 15 subjected her to discharge from the employment. The employer had not made a decision to discharge Ms. Dreisbach in response to the December 15 absence. Ms. Dreisbach had a 17-mile commute from her home to the workplace and elected, based on her assumption that she would be discharged for attendance if

she appeared for work on December 17, not to report for additional shifts, travel to the workplace, or make contact with the employer.

During the last week of November 2017, the employer's Personnel Manager met with Ms. Dreisbach regarding Ms. Dreisbach's accumulation of attendance points and expressed a willingness at that time to overlook three consecutive late arrivals in November to avoid adding attendance points to Ms. Dreisbach's employment record.

Ms. Dreisbach's no-call, no-show absence on December 17, after Ms. Dreisbach had decided not to return to the employment, placed her attendance points in the range that would subject her to discharge. In the absence of contact from Ms. Dreisbach, the employer documented a discharge for attendance on December 18, 2017.

REASONING AND CONCLUSIONS OF LAW:

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. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(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 Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 weight of the evidence establishes that Ms. Dreisbach initiated the employment separation through her decision not to appear for additional shifts after the absence on December 15, 2017, and her lack of subsequent contact with the employer. Ms. Dreisbach's decision to discontinue contact preceded the employer's determination, based on a later absence, that Ms. Dreisbach would indeed be subject to discharge. Ms. Dreisbach's quit in anticipation of the possibility of discharge was a voluntary quit without good cause attributable to the employer. Ms. Dreisbach is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Dreisbach must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because no benefits have been paid on the claim, there is no overpayment of benefits to address.

DECISION:

The July 11, 2018, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective December 15, 2017. 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. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs