

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FELICITY BERANEK
Claimant

WALMART INC
Employer

APPEAL 21R-UI-12139-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 14, 2020, reference 04) unemployment insurance decision that denied benefits based upon her voluntary quit. A hearing was scheduled for February 25, 2021. The claimant did not receive a hearing notice for this hearing. The administrative law judge issued a default decision, 21A-UI-01863-SN-T, because she had not registered to participate in the hearing.

The claimant filed an appeal with the Employment Appeal Board (“EAB”) on May 3, 2021. The EAB remanded to the administrative law judge the determination of the merits of the claimant’s initial appeal because she had not received a notice of hearing.

A telephone hearing was held on July 26, 2021. The parties were properly notified of this hearing. The claimant participated and testified. The employer participated through Manager Lindy Grimm. No exhibits were admitted into the record.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

Whether the claimant was able and available for work effective April 30, 2020, after she separated from employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed part-time as a cashier from November 2018, and was separated from employment on April 30, 2020, when she quit. The claimant’s immediate supervisor was People Lead Connie Ehlers.

The claimant is overweight and has been diagnosed with tracheal stenosis and asthma. The claimant believes she is at higher mortality risk and death if infected by Covid19 due to these conditions. The claimant does not have a note from a medical provider stating she is at high risk.

Prior to resigning, the claimant was being transported by her grandparents to work because she did not have a driver's license. They were apprehensive about her working for the employer because they are both 78 years old, overweight and have underlying health conditions.

After the onset of the Covid19 pandemic in late-March or early-April 2020, the employer implemented practices to prevent the spread of the virus such as implementing screening procedures for staff and customers, encouraging social distancing and capacity limits, and mandating the use of masks. The employer also had a hotline available for employees to request Covid19 related leave.

On April 30, 2020, the claimant told Ms. Ehlers she was resigning because her grandparents were uncomfortable with her working for the employer during the Covid19 pandemic.

The claimant did not obtain a driver's license until October or November 2020.

The claimant applied to take a position at another Wal-Mart in Maquoketa, Iowa in June 2021. At that time, the claimant and her relatives had received Covid19 vaccinations and the claimant had a means to commute to work. The claimant subsequently quit this position.

The claimant currently works for Imagine the Possibilities.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Since the claimant's separation is disqualifying the issue regarding whether she was able and available for work is moot.

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.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(37) The 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. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The claimant said she quit at the end of March or early-April 2020. The claimant could not give a specific date. In this context, the administrative law judge believes the representative was given a more accurate date at fact finding when he or she determined the claimant quit on April 30, 2020.

The claimant also alleged the employer had implemented no mitigation efforts other than establishing a dedicated Covid19 line. The administrative law judge finds this allegation similarly not credible. Primarily this follows the credibility determination above, if the claimant quit at the end of April 2020, it is an incredible allegation to state Wal-Mart had implemented no mitigation strategies after a month and a half. It is also inconsistent with the idea that Wal-Mart implemented a dedicated hotline and allowed for employees to take Covid19 related leave.

The administrative law judge is sympathetic to the claimant's position, especially in light of the health conditions she testified she has. However, she must show that a reasonable person felt compelled to quit from an employer that took reasonable steps to mitigate infection spread, including allowing employees to take leave. The administrative law judge does not think a reasonable employee would quit given those circumstances. While claimant's leaving may have

been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied. Since the claimant's separation is disqualifying, the issue regarding her ability to and availability for work is moot.

DECISION:

The December 14, 2020, (reference 04) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Whether the claimant was able and available for work is moot because her separation is disqualifying.



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August 04, 2021
Decision Dated and Mailed

smn/ol