

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA L PAYNE
Claimant

APPEAL NO. 08A-UI-05664-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 12/02/07 R: 01
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 9, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 7, 2008. The claimant participated personally. The employer participated by Robert Perryman, Store Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on or about January 3, 2008, as a part-time optician. Later, the claimant became a full-time employee. The claimant did not have a drivers' license or a car. She depended on her husband for transportation. The claimant and her husband both drove an hour from their residence to their work at separate retail establishments. The claimant had three children.

On April 1, 2008, the claimant told the employer that she was resigning due to transportation, scheduling, and child care issues. The employer said it would work with the claimant's schedule. The claimant was able to work the hours provided for a few weeks. The employer scheduled the claimant to work every weekend. The claimant did not want to work every weekend because of transportation and child care concerns. The employer could not schedule the claimant for the exact schedule she wanted to work. The claimant notified the employer by telephone on May 12, 2008, that she was quitting. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work 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.

871 IAC 24.25(1), (17), (18), and (30) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(17) The claimant left because of lack of child care.

(18) The claimant left because of a dislike of the shift worked.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

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 claimant's intention to voluntarily leave work was evidenced by her actions. She told the employer she was resigning and stopped appearing for work. When an employee quits work because of child care, dislike of the shift worked, or transportation issues, the separation is without good cause attributable to the employer. Likewise, if an employee quits work because of the commuting distance to the job and knows the commuting distance when she's hired, the separation is without good cause attributable to the employer. The claimant quit because of child care, transportation, shift and commuting distance issues. She voluntarily quit work without good cause attributable to the employer. Benefits are denied.

DECISION:

The June 9, 2008, reference 03, representative's decision is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw