

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON K THOMPSON
Claimant

APPEAL NO. 10A-UI-10685-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/27/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Sharon K. Thompson (claimant) appealed a representative's July 27, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2010. The claimant participated in the hearing and was represented by Robert Wilson. One other witness, Melinda Griffey, was available on behalf of the claimant but did not testify. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Kent Vogel. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on May 16, 2001. She worked full-time as a door greeter at the employer's Cedar Rapids, Iowa store. Her last day of work was March 26, 2010.

The claimant was on an approved vacation leave from March 27 through April 2. On the schedule that had been posted on or before March 26, she was scheduled to return to work on April 3, and was scheduled for various other days that week (specifically including April 5, April 6, and April 7) as well as the following week. On the afternoon of April 2, the claimant received a call from a Nashville business connection indicating that if she wanted to promote a song she had written, she needed to come down there right away. She made a plane reservation for the morning of April 3. She did not contact the employer until she was at the Cedar Rapids airport waiting for her flight on the morning of April 3, but still several hours before she had been scheduled to report for work.

When she called, she spoke to the overnight manager; she explained that she was going to Nashville to promote her song and did not know when she would be back, and so she needed the overnight manager to pass on a request to the daytime manager that the claimant needed a leave of absence. The overnight manager agreed to do so. The claimant never called back in to check to see if her request for a leave of absence had been granted; an attempt to contact the claimant through her husband later that week was unsuccessful. The employer does not grant all requests for personal leaves of absence, and typically requires that a written request be made. When the claimant did not have an approved leave of absence and did not report back to work or contact the employer for the next three scheduled work days, the employer considered the claimant to have voluntarily quit by job abandonment under its three day no-call, no-show policy; she was removed from the schedule as of April 9, 2010.

The claimant did not return to Cedar Rapids until June 20, and did not make any attempt after April 3 to contact the employer until June 21. She was not told by any manager that she did not have a job, but assumed she did not have a job because she was unable to log into the employer's computer screen, learned that her locker had been cleaned out, and learned that a check for her accrued vacation pay had been issued.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). Also, a three-day no-call, no-show in violation of company rule can be considered to be a voluntary quit. 871 IAC 24.25(4). A voluntary quit can be found where there has been no affirmative granting of a leave of absence but an employee determines to take a leave of absence for personal reasons or to pursue a personal business venture regardless of whether permission to take the leave was granted. 871 IAC 24.25(19), (25). The employer reasonably concluded that the claimant had abandoned her position; the claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's July 27, 2010 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of April 9, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw