

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMAN L BROWN
Claimant

APPEAL NO. 14A-UI-06756-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/08/14
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Norman Brown filed a timely appeal from the June 24, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on July 22, 2014. Mr. Brown participated. Archibald Allison, Store Manager, represented the employer. Department Exhibit D-1 was received into evidence.

ISSUE:

Whether Mr. Brown separated from the employer for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Norman Brown was employed by Wal-Mart as a full-time assistant manager at the employer's Ankeny store from 2011 and last performed work for the employer on May 28, 2014. Mr. Brown was responsible for supervision of the hard lines area, which included responsibility for supervising the sporting goods department. The sporting goods department of the Ankeny store sold firearms and ammunition. Until March 2014, Mr. Brown was regularly involved in reviewing firearm sales transactions as they occurred and for walking the purchased firearm out of the store for the customer. During the last week of February 2014, the employer announced that it was going to have salaried members of management undergo new background checks to ensure that such employees were legally eligible to facilitate firearms sales. Mr. Brown had undergone a similar background check earlier in the employment.

In connection with the employer's announcement of renewed background checks, the employer provided affected employees the option of opting out of firearms sales and the background check process. However, the employer at the same time warned employees that if they opted out, the employee would no longer be involved in firearms sales and would have to locate a new position at a different store within a set period or separate from the employment. Mr. Brown notified the employer that he was opting out of gun sales and the background check process. On March 12, 2014, the employer notified Mr. Brown that because he had elected to opt out, he would no longer be involved in firearms sales. In addition, the employer notified Mr. Brown that

he had until May 30, 2014, to locate a new position in a Wal-Mart store that did not sell firearms or he would have to separate from the employment at that time. Based on Mr. Brown's decision not to be involved in further firearms sales, the employer changed Mr. Brown's work hours from 8:00 a.m. to 8:00 p.m. to overnight hours, 8:00 p.m. to 8:00 a.m. The employer did not allow gun sales during the overnight hours.

Mr. Brown cites a customer's suicide by firearm in the summer of 2012 as the basis for his decision to discontinue his participation in firearms sales effective March 2014.

Archie Allison, Store Manager for the Ankeny store, kept in touch with Mr. Brown regarding Mr. Brown's search for another assistant manager position. The employer was at all times willing to allow Mr. Brown to continue in his position at the Ankeny store provided Mr. Brown was willing to facilitate gun sales. In May, Mr. Brown applied for open assistant manager positions at Wal-Mart stores located in Grimes and Windsor Heights. Neither of those stores sold firearms. The managers of the Grimes and Windsor Heights stores elected to hire someone else to fill their open assistant manager positions and considered Mr. Brown's prior evaluations. Mr. Brown also contacted the Wal-Mart store on the south side of Des Moines about a possible position, but that store did not have an opening for an assistant manager.

Mr. Brown's last scheduled day was May 28, 2014. At that time, Mr. Brown elected to separate from his position at the Ankeny store rather than undergo the background check and return to facilitating firearms sales.

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. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 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 871 IAC 24.25.

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. Mr. Brown advised the employer in March 2014 that he would no longer facilitate firearm sales, something that had been part of his duties since he started the employment in 2012. Based solely on Mr. Brown's decision to make a substantial change to the conditions of his employment, and based on the employer's need for managers to assist with firearms sales, the employer gave Mr. Brown a choice. He could choose to continue assisting with firearm sales, he could attempt to find a new position within the company at a store that did not sell firearms, or he could leave the employment. After Mr. Brown was unable to find a position in a store that did not sell firearms, Mr. Brown elected to leave the employment, rather than continue in duties that had been part of his employment since the start.

Iowa Code § 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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Mr. Brown was the party who initiated the changes in the conditions of the employment, not the employer. Everything that came later flowed from that decision. The timing of the change in hours was directly attributable to Mr. Brown's refusal to facilitate gun sales during the hours when the employer needed him to do that. The separation from the employment was directly attributable to Mr. Brown's election not to participate in gun sales and not to continue in the employment if such decision required submitting to the background check and participation in gun sales. In other words, Mr. Brown elected to leave the employment rather than perform the work as assigned. The evidence does not establish intolerable or detrimental working

conditions. Whatever Mr. Brown's feelings about the 2012 tragedy, he demonstrated the ability to move beyond that experience and the ability to continue to perform his assigned duties until almost two years later when he suddenly decided to change course.

Mr. Brown voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Brown is disqualified for benefits until 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 employer's account shall not be charged for benefits.

DECISION:

The claims deputy's June 24, 2014, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs