

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY R BROWN

Claimant

APPEAL NO. 11A-UI-12485-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 08/14/11

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated September 12, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 6, 2011. Claimant participated personally. The employer participated by Mr. Timothy Morrow, Assistant Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Larry Brown was employed by Wal-Mart Stores, Inc. from March 26, 2000 until August 5, 2011 when he left employment due to dissatisfaction with scheduling. Mr. Brown was employed as a full-time sales associate. His immediate supervisor was Sue Keenan.

Mr. Brown left his employment with Wal-Mart Stores, Inc. after becoming dissatisfied with a decision made by his immediate supervisor to schedule him after 5:00 p.m. on some shifts. At the time the claimant most recently completed his availability sheet with the company, Mr. Brown had indicated that he wished to work no later than 5:00 p.m. each day. The company considers the employee's availability requests in scheduling hours but retains the right to schedule employees as needed for business related reasons. Employees are informed of the company's policy of assigning employees as needed by company requirements.

Mr. Brown initially contacted his immediate supervisor to complain of his scheduling but his supervisor was unresponsive. The claimant then contacted a company assistant manager approximately one week before his leaving employment. Mr. Brown attempted to meet with the assistant manager on two occasions and left when he believed the assistant manager was, in effect, disrespectful, because he had walked past Mr. Brown without meeting with him. Mr. Brown had not scheduled an official time or meeting agenda with the assistant manager, however.

Wal-Mart Stores has an open door policy in place which allows employees to go up the chain of command if they feel that an immediate supervisor or a higher manager is not responsive to their needs. Employees are aware of the open door policy as it is covered in orientation, placards and verbal reminders given in meetings. The placard posted in common areas not only identifies management individuals to whom complaints can be made but also shows pictures of them and identifies who they are for employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

An individual who voluntarily leaves employment due to dissatisfaction with the working conditions or other factors related to his employment must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if the conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

In this matter the claimant knew or should have known that although he had filled out an employee availability request form that the company was not bound to follow his availability desires in all situations. The agreement to follow an employee's availability statement was contingent upon the employer being able to staff the facility adequately.

In this case the claimant was temporarily assigned to work past 5:00 p.m. and followed a reasonable course of action by initially contacting his immediate supervisor to complain. Mr. Brown found the supervisor to be less than understanding and, therefore, desired to bring his areas of dissatisfaction to the attention of upper management. The claimant, however, did not schedule an official meeting with his reasons stated but instead attempted to meet with an assistant manager informally and was upset when the assistant manager did not seem to recognize the claimant or the reason that he was waiting to speak to the assistant manager.

The evidence in the record clearly establishes that the employer has an open door policy and that the policy is widely announced to employees informing them that they have the right to go up the chain of command as far as necessary to address complaints or dissatisfactions. The claimant who appears to have been angry at what appears to be a rebuff from the assistant manager did not follow the company's open door up the chain of command policy but instead relinquished his position immediately.

Although sympathetic to Mr. Brown's situation, the administrative law judge concludes based upon the application of the facts of this case to the law that the claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated September 12, 2011, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs