

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SPENCER BARSKE
Claimant

WALMART INC
Employer

APPEAL 21A-UI-10813-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 16, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2021. The claimant participated and testified. The employer did not participate. The employer provided its general number for the location the claimant worked at. It did not provide any extension or instructions for reaching the witness, Human Resources Director Stacy Stabnow. The administrative law judge made two attempts to reach someone who could direct his call, no one answered those calls. No exhibits were received into the record.

ISSUE:

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

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 health ambassador from early-spring 2020, until was separated from employment on November 17, 2020, when he quit. The claimant was hired on to be a door greeter, but he was told he would be a health ambassador shortly after being hired.

The claimant is 57 years old. The claimant is also overweight. He is not aware if he has any health conditions that place him at a higher mortality risk as a result of Covid19 infection.

After the onset of the Covid19 pandemic, the employer implemented various Covid19 mitigation strategies to prevent the spread of infection. It implemented sanitation of shopping carts. Staff were screened at the back door by taking their temperature and asking them screening questions. Employees were required to wear masks. It also at times required customers to wear masks. The employer also implemented capacity standards for customers coming into the store. The practice called for five employees to conduct these mitigation strategies. Some of the time

there would not be five employees conducting these tasks. The claimant was uncertain if all of the tasks were being performed on time. The practice also changed many times. For instance, initially employees were instructed to deny entry to the store to someone who refused to wear a mask. Later in the year, customers were allowed entry to the building regardless of whether they were wearing a mask, even though the vaccine had not been distributed yet. The practice was inconsistent in other ways. For instance, employees would count the number of customers coming in the store and would attempt to prevent customers from clustering together. This sort of counting and organizing of customers when they entered was not consistently done when they exited the building.

The claimant believes that the employer should have conducted meetings for all of the employees stationed at the front of the store to make sure everyone was on the same page. The employer issued a list for tasks to be completed and designated these tasks to a particular employee, but sometimes employees would perform tasks they were not assigned to complete. During times like these, the claimant would be uncertain what he was supposed to do if someone else was completing his task.

The claimant believes if he had been told what his job position was and what it entailed, he would have felt much better.

Throughout his term of employment, Mr. Barske reported these various concerns to several members of the management team. These members of the management team told him they were not sure what could be done about these concerns.

In late-October or early-November 2020, the claimant submitted his resignation to Human Resources Director Stacy Stabnow. The claimant told Ms. Stabnow that he just did not feel comfortable working for the employer.

The claimant did not receive a vaccination until June 29, 2020.

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.

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:

(21) The claimant left because of dissatisfaction with the work environment.

(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.

Iowa Admin. Code r. 871-24.26 (2) and (4) provide:

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:

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant due to the lack of safety procedures provided to employees to perform the job and the employer's guidelines that failed to properly protect her from infection. As such, the claimant's voluntary quitting was for a good-cause reason attributable to the employer according to Iowa law. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant unambiguously tendered his resignation with the intention to quit. In that context, 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).

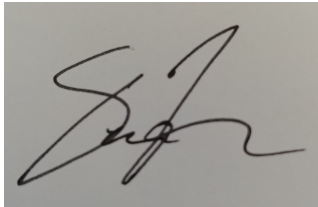
The administrative law judge concludes the claimant's working conditions were not objectively intolerable. This is not a case in which the employer did not develop some mitigation strategies in the wake of Covid19. The claimant acknowledges the employer developed several evolving strategies to mitigate the risk of infection spread. While the claimant brings up constructive criticism regarding the consistency of those plans, these constructive criticisms of what existed do not amount to intolerable working conditions. In particular, the claimant states the evolution of the practices were bothersome, but employers all over the country were changing their practices as the Centers for Disease Control gave additional guidance.

Nor is the claimant's allegation that he was not totally aware of what his exact title was. It is not uncommon for retail employers to have a generalized title for many of the employees who work

in its store, such as associate. The tasks that particular employee may perform may vary on a day to day basis. In this context, the administrative law judge does not find this allegation significant. 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.

DECISION:

The April 16, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 14, 2021
Decision Dated and Mailed

smn/kmj