

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TRENT J LEE**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL 17A-UI-03003-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/19/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 6, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2017. Claimant participated. Nicholle Nordlund registered as a witness on claimant's behalf, but claimant elected not to have her contacted and she did not participate. Employer participated through auto care center manager Sam Hussome. Claimant Exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record, including claimant's wage history, with no objection.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a customer service manager from September 14, 2015, and was separated from employment on February 18, 2017, when he quit.

On February 18, 2017, claimant sent a text message to his superior, Amanda, telling the employer that he quit and he was done. Claimant Exhibit A. Claimant had not been able to sleep because of harassment at work. Claimant was worried about the asset protection manager, Dustin, watching the cameras to try to find a reason to have him fired. Claimant was told by two of his superiors that Dustin wanted to get him fired. Prior to February 18, 2017, Dustin had told claimant that he had been working on getting a couple of employees fired.

On February 19, 2017, Mr. Hussome called claimant because he had heard that claimant was quitting. Mr. Hussome asked claimant how things were going. Claimant told Mr. Hussome he was quitting because of all the drama at the front end. Mr. Hussome asked claimant if he would give the employer a two week notice. Claimant told Mr. Hussome that he could not do that and he was just done. Mr. Hussome told claimant that it would look better if he gave two weeks' notice and claimant responded he could not and he quit. Mr. Hussome accepted claimant's resignation.

Claimant felt harassed and embarrassed by Dustin and another employee, Gaylon. Claimant felt that Dustin was trying to get Gaylon, another employee, his customer service manager position. A couple days before claimant quit, he came to work and one of his superiors (Amanda) pulled him into the office and told him that Dustin was watching him on the cameras and he needed to be following the rules. Amanda told claimant that Dustin had asked her why claimant allowed an employee to eat ice cream at the service desk. Claimant testified that employees are allowed to eat at the service desk and the employer does not have a rule prohibiting eating at the service desk. Gaylon would try to embarrass claimant in front of employees and customers. Gaylon would tell claimant that he was not joking with him.

Claimant complained to the employer on multiple occasions about Gaylon and Dustin, but the situation did not improve after he complained. Mr. Hussome was aware during the last six or eight months of claimant's employment about the situation with Gaylon, Dustin, and claimant. When claimant would complain to Mr. Hussome about Dustin, Mr. Hussome would refer him to the store manager. Claimant would then complain to the store manager, but the situation did not improve. Claimant would also complain to Mr. Hussome that Gaylon was out to get him. Mr. Hussome spoke to Gaylon on multiple occasions about claimant's complaints, but he did not discipline Gaylon and the situation did not improve. Gaylon was a support manager and had authority over claimant. Mr. Hussome had authority over Gaylon.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds claimant's version of events to be more credible than the employer's recollection of those events.

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. 871-24.26(4) 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:

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

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). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant credibly testified that he complained to the employer on multiple occasions regarding the harassment from two employees. Although the employer spoke to the two employees, claimant credibly testified that the situation did not improve and no evidence was presented that either of the two employees were disciplined. Furthermore, Mr. Hussome testified that he was aware of the situation during the last six to eight months of claimant's employment. Claimant's comments to Mr. Hussome on February 19, 2017 that work environment was so bad that he could not give the employer a two week notice and had to quit immediately, also lends credibility that the work environment was intolerable for claimant. Thus, claimant has established good cause reasons for leaving the employment. The conduct by claimant's coworkers created an intolerable work environment for him that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

**DECISION:**

The March 6, 2017, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs