

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ANNA J NEBEL**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL 16A-UI-08484-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/10/16**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 2, 2016, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 24, 2016. Claimant participated. Employer participated by Karen Beard, Human Resources Manager. Employer's Exhibits 1 through 5 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 18, 2016. Claimant decided to quit after that date, but did not submit a written or oral notice of resignation.

Claimant was hired as a part-time employee in March of 2016. She was expecting to give birth in a few months, and she was also a student. Claimant explained her situation to her manager, but she did indicate on her application of employment that she was available to work from opening to closing on most days. Claimant was expecting to work 20 to 30 hours a week.

Claimant began working hours that were difficult for her beginning in April of 2016. Some days she would work until closing at 10:00 p.m. and then would be scheduled to come in the next morning at 5:30 a.m. Claimant was not comfortable working those hours while being pregnant and in school. She explained this to her manager, and her hours were changed to just evening hours for about 10 days. Later in May, 2016 she was scheduled to work late night hours and early morning hours again. Claimant decided that she would be unable to work those type of hours, and she stopped coming into work after May 18, 2016.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she did not like working morning and night-time hours.

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(18) 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:

(18) The claimant left because of a dislike of the shift worked.

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer. Benefits must be denied.

**DECISION:**

The decision of the representative dated August 2, 2016, (reference 02) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs