

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULEE H SMITH
Claimant

APPEAL NO: 13A-UI-02178-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/20/13
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 15, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer again in November 2006. She worked as a full-time supervisor until she took a leave of absence after her husband passed away. When the claimant returned from her leave of absence in September, the employer scheduled her to work nights. She had not worked nights before. The claimant worked one day and then went on another leave of absence. This leave of absence ended on November 25.

The claimant asked to extend her leave of absence, but this request was denied. The employer then told the claimant since her work restrictions did not allow her to work past 10:00 p.m., the employer changed her employment from a full-time to a part-time employee. As a result of changing her status from full time to part time, the claimant lost benefits including her insurance. The claimant tried to transfer to another store that would accommodate her restrictions and allow her to work full time, but this did not happen. The claimant gave the employer her two-weeks' notice after her employment status changed to part time. The effective date of her resignation was December 18, 2012. She worked until December 18, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). The law

presumes a claimant leaves employment with good cause when she quits because of a substantial change in the employment. 871 IAC 24.26(1). The evidence indicates that when the employer changes the claimant's employment from full time to part time, the employer substantially changed her employment. The employer may assert the reason for the change in employment status was not the employer's fault. In *Wiese v. Iowa Department of Job Service*, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer."

In *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 to 35 percent reduction in hours was, as a matter of law, a substantial change in the contract of hire. Further, while citing *Wiese* with approval, the Court stated that:

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith.

(*Id.* at 702.) *Dehmel* the more recent case is directly on point with this case. The fact the reduction in hours may have been due to circumstances beyond the employer's control, under the reasoning of *Dehmel*, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer. Since the claimant went from a full-time to a part-time employee, this is a substantial change as a matter of law. Therefore, the claimant is qualified to receive benefits as of January 20, 2013.

DECISION:

The representative's February 15, 2013 determination (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that qualify her to receive benefits. As of January 20, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll