

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DALE M EYRICH
Claimant

APPEAL NO. 18A-UI-06310-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 04/29/18
Claimant: Respondent (5)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 29, 2018, reference 01, decision that allowed benefits to claimant Dale Eyrich provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Eyrich was discharged on April 13, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on June 25, 2018. Mr. Eyrich participated. Shaun Rees represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence.

ISSUE:

Whether Mr. Eyrich separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dale Eyrich was employed by Walmart, Inc. as a part-time People Greeter at the Walmart store in Fort Dodge from until April 13, 2018, when he voluntarily quit in response to changes in the conditions of the employment. Mr. Eyrich is 68 years old, is disabled by a hip injury and suffers from chronic obstructive pulmonary disease (COPD). Mr. Eyrich usually uses a motorized scooter to move about. Mr. Eyrich is able to use a wheelchair and able to walk short distances with crutches. Mr. Eyrich received his motorized scooter through the Veterans Administration, but the replacement cost would be \$5,000.00 to \$7,000.00. Mr. Eyrich's scooter has a seat that swivels, and has tires that provide traction, including on wet surfaces.

Mr. Eyrich began his Walmart employment as a part-time bicycle assembler, but in May 2017 transitioned to a part-time People Greeter position. As a People Greeter, Mr. Eyrich was stationed at the entrance of the employer's store. His duties included pleasantly greeting customers, being the initial point of contact for customers returning merchandise, providing a pleasant farewell to customers, and checking to see whether customers leaving with unbagged merchandise had a receipt for the merchandise. Per company policy, Mr. Eyrich was not allowed to chase customers to secure proof of purchase. If necessary, Mr. Eyrich could

maneuver his scooter between the customer and the exit to request proof of purchase. Mr. Eyrich performed his People Greeter duties to the level of his ability and did not receive any reprimands in the course of performing those duties for almost a year.

In late March 2018, Brad Henderson, Store Manager, notified Mr. Eyrich that he would be removed from the People Greeter position effective April 13, 2018. Mr. Henderson told Mr. Eyrich that he was being removed because he was “not aggressive enough.” However, Walmart had made a corporate decision to restructure the People Greeter positions so that the People Greeters had greater interaction with customers. In connection with restructuring the People Greeter duties, Walmart had established a company rule that persons with disabilities were barred from the People Greeter positions. Mr. Eyrich was willing to continue if People Greeter duties if allowed to do so.

When the employer notified Mr. Eyrich that the employer was removing Mr. Eyrich from his People Greeter position, Mr. Eyrich commenced his search for new employment. Mr. Eyrich applied for a dispatcher position with a trucking firm. On or about April 3, 2018, the trucking firm notified Mr. Eyrich “that if everything was favorable, he would get the dispatching job.” At about this time, Walmart’s management team asked Mr. Eyrich why he had not applied for another position within the company. Mr. Eyrich had been unaware that he was supposed to be looking at other available positions. Mr. Eyrich spoke with a personnel representative to see what positions the Fort Dodge Walmart store had available. Mr. Henderson told Mr. Eyrich that the store needed cashiers. The cashiering position would pay the same wage and offer comparable work hours. Mr. Eyrich told Mr. Henderson that the only way he would be able to perform the cashiering position is if he could use his motorized scooter. Mr. Eyrich’s motorized scooter was small enough to maneuver into the cashier’s space in a checkout lane. The scooter’s swiveling seat would allow Mr. Eyrich to back into the spot and swivel to face customers. The store’s management team told Mr. Eyrich that he would have to complete an accommodation request form to use his scooter when cashiering, rather than using the employer’s scooters. The employer told Mr. Eyrich that he could perhaps store his scooter in the back room somewhere and use the employer’s scooters. Mr. Eyrich had a number of concerns about the employer’s proposal that he forego using his scooter. It was unclear where the employer would store Mr. Eyrich’s scooter. If Mr. Eyrich’s scooter was to be store in the back room, Mr. Eyrich would need access to the employer’s scooter at the back of the store to get to the checkout lanes at the front of the store. If customers were using the employer’s scooters, Mr. Eyrich would not have access to the employer’s scooters. Mr. Eyrich thought that the practical logistics involved in trying to use the employer’s scooters would make it necessary for him to leave his scooter at the front of the store where the employer kept its scooters. This would leave Mr. Eyrich’s scooter accessible to customers, where it could be used without authorization, damaged or stolen. Mr. Eyrich met with his doctor the next day, had his doctor complete the accommodations request form, and forwarded the completed form to the employer.

On April 5, 2015, Mr. Eyrich completed a Walmart Voluntary Resignation Form. When asked to provide a reason for his resignation, Mr. Eyrich wrote, “I may have a different job.” Mr. Eyrich checked in with the management team to see whether the Walmart corporate office responded to his request to continue to use his scooter. The corporate office did not respond to Mr. Eyrich prior to his employment coming to an end on April 13, 2018.

The potential dispatch job with the trucking firm fell through after Mr. Eyrich separated from Walmart.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer in response to substantial changes in the conditions of employment. From May 2017 until April 2018, Mr. Eyrich worked as a People Greeter and was able to use his personal motorized scooter in the course of performing the People Greeter duties. For roughly the first year of the employment, the employer reasonably accommodated Mr. Eyrich's disability by allowing him to use his personal motorized scooter in the performance of his duties. Toward the end of the employment, the employer elected to make substantial changes in the conditions of the employment. The employer elected to remove Mr. Eyrich from the People Greeter position effective April 13, 2018, in connection with minor changes to the People Greeter duties. The employer's decision to remove Mr. Eyrich from the People Greeter position was based solely on Mr. Eyrich's status as a disabled person. The employer proposed that Mr. Eyrich commence working as a cashier. To perform the cashiering duties, Mr. Eyrich needed to continue to use his motorized scooter. However, the employer took the position that Mr. Eyrich would have to

use the employer's older, less maneuverable, and potentially unavailable scooters. Pursuant to the employer's position, Mr. Eyrich would be required to leave it parked unattended at the back of the store or at the front of the store where it would be at risk of being damaged or stolen. Mr. Eyrich elected to separate from the employment, rather than acquiesce in the substantial changes in the conditions of the employment. Mr. Eyrich provided timely notice to the employer. Mr. Eyrich has a tentative job offer, but not an actual job offer at the time he tendered his resignation and separated from the employer. Mr. Eyrich is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 29, 2018, reference 01, decision is modified as follows. The claimant quit the employment for good cause attributable to the employer. The quit was effective April 13, 2018. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs