

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA A THACHER
Claimant

APPEAL 20A-UI-09996-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 04/05/20
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer

Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer

STATEMENT OF THE CASE:

The claimant, Lisa A. Thacher, appealed the August 7, 2020 (reference 03) unemployment insurance decision that denied benefits based upon a finding Thacher voluntarily quit her job with Walmart, Inc. (Walmart) without good cause attributable to the employer. The agency properly notified the parties of the appeal and hearing.

The undersigned presided over a telephone hearing on September 30, 2020. Thacher participated personally and testified. Walmart did not participate.

ISSUES:

Was Thacher's separation from employment with Walmart 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 undersigned finds the following facts.

Walmart hired Thacher on October 17, 2019. She worked there full time; first as an associate, then as a department manager before being demoted back to associate. Thacher's immediate supervisor was Michelle Means. Thacher quit on June 12, 2020.

Thacher worked hard as a Walmart employee. The company promoted her to department manager. The promotion included a pay raise from \$11.25 per hour to \$12.50 per hour.

COVID-19 began spreading across the state and nation in the spring of 2020. COVID-19 is a virus that impacts the respiratory system. It poses a higher risk of serious illness or death to people who have preexisting health conditions.

Thacher's son has a respiratory condition. He has since his first day of life. Her son takes albuterol to help him breathe. Because of her son's compromised respiratory health, he is at an increased risk of serious illness or death if he contracts COVID-19.

Thacher's job duties at Walmart required her to interact with the public. Walmart had no policy in place regarding face masks. Wearing a face mask helps reduce the risk of COVID-19 spreading because it mitigates the projection of germs by the person wearing the mask. Walmart's lack of a mask mandate concerned Thacher because it increased the risk of her catching the virus while working. She complained to Means about the lack of a mask mandate multiple times, but Means said she could do nothing because it was a decision made by Walmart's corporate higher-ups.

Walmart offered Thacher a leave of absence because of COVID-19. She took leave for two months to reduce the risk that she would contract COVID-19 and transmit it to her son. Thacher returned to work the first week of June.

In the middle of her first week back, Means informed her that Walmart was demoting her from department manager to associate and reducing her pay from \$12.50 to \$11.25. Thacher quit her job on June 12, 2020, because Walmart demoted her, and consequently reduced her pay, and due to the increased safety risk caused by Walmart's lack of a mask policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Thacher voluntarily left employment with Walmart without good cause attributable to the employer under the Iowa Employment Security Law, Iowa Code chapter 96.

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit her job without good cause attributable to the employer. The Iowa Supreme Court has held that good cause requires "real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). Moreover, the court has advised that "common sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

According to the Iowa Supreme Court, good cause attributable to the employer does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956).

A burden-shifting framework is used to evaluate quit cases. Because an employer may not know why a claimant quit, the claimant has the initial burden to produce evidence suggesting the claimant is not disqualified from benefits under Iowa Code section 96.5(1) a through j and section 96.10. If the claimant produces such evidence, the employer has the burden to prove the claimant is disqualified from benefits under section 96.5(1).

Iowa Administrative Code rule 871-24.25 creates a presumption a claimant quit without good cause attributable to the employer in certain circumstances. Iowa Administrative Code rule 871-24.26 identifies reasons for quitting that are considered for good cause attributable to the employer. Under rule 871-24.26(1),

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.

Rule 871-24.26(2) states that quitting because of unsafe working conditions is reason for leaving employment with good cause attributable to the employer.

Here, the evidence shows that Walmart reduced Thacher's pay because she took COVID-19 leave. The decrease in her wage from \$12.50 per hour to \$11.25 per hour constituted a 10 percent reduction. This is a substantial change in her wages under rule 871-24.26(1).

Further, the evidence shows that Walmart refused to institute a mask policy for customers and workers while Thacher was employed there. This policy choice increased the risk that Thacher might contract COVID-19 from a customer or fellow employee. It made her employment with Walmart less safe.

For these reasons, the evidence establishes Thacher quit her job with Walmart for good cause attributable to the employer under Iowa Code section 96.5(1) and rules 871-24.26(1) and 871-24.26(2). Benefits are allowed, provided Thacher is otherwise eligible.

DECISION:

The August 7, 2020 (reference 03) unemployment insurance decision is reversed. Thacher voluntarily left employment with good cause attributable to Walmart. Benefits are allowed, provided Thacher is otherwise eligible. Any benefits withheld due to the August 7, 2020 (reference 03) decision shall be paid.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

Ben Humphrey
Administrative Law Judge

October 1, 2020
Decision Dated and Mailed

bh/sam