

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03817-DWT
OC: 02/19/06 R: 03
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntarily Quit

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's March 22, 2006 decision (reference 01) that concluded Aaron J. Wagner (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2006. The claimant participated in the hearing. Mark Meyer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 5, 2005. The claimant worked full time as an inventory control staff. Meyer was the claimant's supervisor.

About the same time the claimant had to deal with some personal issues, a co-worker started making comments about his work and that she thought the claimant spent too much time with another co-worker. The claimant reported these comments to Meyer. The claimant wanted to be transferred or work in an area away from this co-worker. Meyer listened to the claimant's concerns but was not aware that the claimant felt his co-worker was harassing him. The employer did not transfer or change the claimant's work location.

The claimant also complained about this co-worker to other employees in management. Just prior to his employment separation, the claimant told a manager that problems between this individual and himself had not improved. This manager told the claimant he needed to suck it up and handle it like a man.

On March 1, the claimant called the employer to report he would be late for work. The claimant was trying to decide if was going to quit because he could no longer tolerate the co-worker's remarks. The claimant considered his co-worker's treatment of him and comments toward him as harassment. When the claimant did not report to work, another management employee, C.B., called the claimant and was upset because the claimant was six hours late for work. C.B. did not give the claimant an opportunity to explain why he had not reported to work on March 1, 2006. The claimant did not report to work anytime after February 28, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The claimant voluntarily quit his employment on March 1, 2006. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits employment with good cause when he quits due to intolerable or detrimental working conditions. 871 IAC 24.26(4). The facts establish the claimant talked to Meyer about problems he had with a co-worker in late January. Even though the claimant may not have talked to Meyer again about any problems, the evidence indicates the claimant talked to other management personnel about the co-worker's criticisms and comments. While the claimant may have been overly sensitive because he was also dealing with some personal issues about this same time, an employer takes an employee as he is. A manager's remark about handling the situation like a man was inappropriate. The facts do not establish what, if anything, the employer did about the claimant's complaints regarding a particular co-worker. From the claimant's perspective, the employer did nothing. When the claimant decided he could no longer handle the stress the co-worker created by her derogatory

comments about him and toward him, the claimant quit. Under the facts of this case, the claimant established that he quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of February 19, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 22, 2006 decision (reference 01) is modified, but the modification has no legal consequence. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of February 19, 2006, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf