

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESTHER I MCCANDLESS
Claimant

APPEAL NO. 11A-UI-02110-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

**OC: 01/02/11
Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Esther McCandless filed an appeal from a representative's decision dated February 15, 2011, reference 01, which denied benefits based on her separation from K Mart Corporation. After due notice was issued, a hearing was held by telephone on March 31, 2011. Ms. McCandless participated personally and was represented by Robert Wilson, Attorney at Law. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. McCandless was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. McCandless was employed by K Mart Corporation from June 6, 2006 until September 13, 2010. She was last employed full time as front end supervisor. She was working from 8 to 12 hours each week at the time of separation. At the time of separation, she had a work-related injury that precluded full work activity. Ms. McCandless quit the employment because of what she felt to be harassment from her store manager.

Ms. McCandless is required by her doctor to wear a specific type of shoe. The shoes she wore throughout her employment were apparently contrary to the employer's dress code. She provided a statement from her doctor to her initial manager. She also provided a doctor's statement when her new manager, Russ, raised the issue of her shoes. On almost a daily basis beginning in approximately May of 2010, Russ would question her as to when she was going to get new shoes. He would also tell her she was not to wear those shoes and that she would be fired if she continued to do so.

On or about September 11, Ms. McCandless told an assistant manager that she was thinking about quitting because of the harassment. She was encouraged to meet with the store manager beforehand and she agreed to do so. She was scheduled to meet with the manager

on September 12 but he did not appear. She was encouraged by management to contact him, which she did, and a meeting was scheduled for September 13. During the meeting, Ms. McCandless began addressing her issues but the manager told her he could not have further discussion with her because she had quit. Ms. McCandless then left.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Ms. McCandless quit her job. She had told an assistant manager that she was thinking of quitting. She did not challenge the manager's assertion on September 13 that she had quit. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. McCandless quit because of harassment from her manager.

The employer was well aware from the two doctor's statements that Ms. McCandless was medically required to wear a specific type of shoe. Since she wore the same shoes, or type of shoes, the entire time she worked there, it must be concluded that at least her initial manager accommodated the deviation from the dress code. During the last five months of her employment, Ms. McCandless was regularly questioned by her current manager about her shoes. She was threatened with discharge if she did not wear different shoes. Based on the foregoing, the administrative law judge concludes that the employer refused to continue accommodating Ms. McCandless with regard to her shoes.

Given the employer's earlier accommodation, allowing Ms. McCandless to deviate from the dress code with respect to her shoes became a term and condition of her employment. By requiring her to wear other shoes, the employer unilaterally changed the conditions of the employment. Inasmuch as Ms. McCandless' doctor prescribed the shoes she wore, the employer's new requirement constituted a substantial change in working conditions as contemplated by 871 IAC 24.26(1).

The administrative law judge also concludes that Ms. McCandless quit because of intolerable working conditions as contemplated by 871 IAC 24.26(4). Her manager raised the issue of her shoes on a regular basis. Since the employer was aware of the doctor's recommendation and the reason she wore the shoes, there should have been no need for the issue to be raised on a regular, almost daily basis. Nor should there have been any reason to threaten her with discharge over the matter. Her manager did not appear for their scheduled meeting on September 12 and told her on September 13 that he could not address issues because she had already quit. This does not appear to be the posture of an employer who is willing to address and resolve issues in order to salvage the employment relationship.

After considering all of the evidence, the administrative law judge concludes that Ms. McCandless had good cause attributable to the employer for quitting her job at K Mart Corporation. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 15, 2011, reference 01, is hereby reversed. Ms. McCandless quit her employment for good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/