

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JONI K. ROSLANSKY
Claimant

WALMART, INC.
Employer

APPEAL 20A-UI-05861-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause
Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause

STATEMENT OF THE CASE:

The claimant, Joni K. Roslansky, appealed the June 3, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Roslansky voluntarily quit her job with Walmart, Inc. (Walmart) without good cause attributable to the employer. The agency properly notified the parties of the appeal hearing.

The undersigned presided over a telephone hearing on July 15, 2020. Roslansky participated personally and through hearing representative Hayden Roslansky. She also testified. Walmart participated through Allison Russell, a manager who was Roslansky's immediate supervisor. Claimant's Exhibits A and B were admitted into evidence.

ISSUES:

Was Roslansky'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 Roslansky in or around March of 2018. She worked part time as a cashier. Roslansky's immediate supervisor was Russell. Roslansky resigned on March 12, 2020.

As a cashier, Roslansky interacted with many customers while in close proximity to them. These interactions increased the risk that she might contract COVID-19 while on the job. Roslansky has a high risk of death if she contracts COVID-19 because she has a history of hypertension, obesity, stroke, carotid artery stenosis, and hyperlipidemia.

Walmart had taken some precautions to mitigate the spread of COVID-19 among customers and workers. Walmart regularly cleaned the store. It also allowed employees to wear masks, However, Walmart did not have any plastic dividers between cashiers and customers, provide masks to all employees, or require customers to wear masks when in the store.

Walmart also put in place a COVID-19 leave of absence policy. It allowed an employee to take up to two weeks of paid leave due to the virus. Moreover, Walmart allowed employees to take an unpaid leave of absence due to risks relating to COVID-19. Walmart has allowed employees to go on extended unpaid leaves of absence due to COVID-19.

Roslansky considered quitting her job at Walmart for a period of time before her resignation. She told Russell that life was too short to be at work all the time. Roslansky also expressed concerns about COVID-19. Russell advised Roslansky not to quit if she did not want to quit and informed her of the leave of absence policies in place regarding COVID-19.

Roslansky's daughter is a licensed nurse practitioner. She had concerns about Roslansky working as a cashier at Walmart during the COVID-19 outbreak. Roslansky's daughter advised Roslansky to quit her job out of concerns about her safety caused by the COVID-19 outbreak. Roslansky's daughter called her on March 12, 2020, and told Roslansky that she did not want her to work as a cashier for Walmart anymore because the risk of catching COVID-19 and dying from it was too great.

On March 12, 2020, Roslansky informed Russell that she was resigning, effective at the end of her shift. That was the last day Roslansky worked for Walmart. It is also the day Walmart recorded her employment as having ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Roslansky's separation from the employment was without good cause attributable to Walmart under Iowa law.

Iowa Code section 96.5(1) states an individual is disqualified for benefits if the individual left work voluntarily without good cause attributable to the individual's employer. Iowa Administrative Code rule 24.25 states:

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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10.

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). "[C]ommon 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." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment 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 Employment Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956).

Iowa Administrative Code rule 24.26(6) governs separations because of illness, injury, or pregnancy. However, that rule applies when the claimant was ill. It is therefore inapplicable to the current claim because Roslansky quit due to her risk of illness and its possible effects, not because she was actually ill.

Under Iowa Administrative Code rules 24.26(2), a claimant quit her job for good cause attributable to the employer if the claimant quit due to unsafe working conditions. On the other hand, Iowa Administrative Code rule 24.25(21) creates a presumption the claimant quit without good cause attributable to the employer if the claimant quit due to dissatisfaction with the work environment. Which of these rules applies to a given claim is decided by determining whether the working conditions were unsafe because of the employer or due to the personal condition or preferences of the claimant.

At the time Roslansky quit, Gov. Reynolds had shut down some Iowa businesses by executive order, but had allowed essential businesses to stay open. *See, e.g., State of Iowa, Executive Department, Proclamation of Disaster Emergency* (Apr. 10, 2020). Since Walmart was operating, it presumably qualified under the governor's order as an essential business.

Walmart had taken some steps to mitigate the risk of exposure to COVID-19 for customers and employees. Walmart was regularly cleaning the store. It allowed workers to wear masks if they wished. However, at the time of Roslansky's resignation, Walmart did not have barriers in place between cashiers and customers, provide all employees with face masks, or require customers to wear face masks. In addition, Walmart had COVID-19 leave policy in place that Russell shared with Roslansky.

Because of her personal health conditions and medical history, Roslansky was at a higher risk of serious illness or death from COVID-19. This motivated her daughter to advise her to quit. It was also the reason Roslansky quit. Put otherwise, Roslansky quit because her job as a cashier at Walmart posed a higher risk to her personally than it did to other workers who were younger or did not have health conditions or a medical history similar to Roslansky.

The Iowa Employment Security Law has been interpreted to create a distinction in quit cases between causes personal to the claimant and causes attributable to the employer. If the cause of the quit is attributable to the employer, the claimant is entitled to benefits. If the cause is not attributable to the employer, the claimant is not eligible for benefits.

Here, there was a danger in the form of the COVID-19 pandemic that implicated the safety of all employees in the state and nation. The increased risk created by COVID-19 was therefore universal and not attributable to Walmart or Roslansky's job. Further, Roslansky's personal health conditions and medical history increased her personal risk of serious health issues or death if she contracted COVID-19. This high risk was hers personally and not attributable to Walmart or her job.

For these reasons, the evidence establishes Roslansky did not quit her job for good cause attributable to Walmart. Rather, she quit her job due to the general risk created by the COVID-19 pandemic and the increased risk from COVID-19 that she personally has due to her health conditions and medical history. Roslansky quit her job with Walmart without good cause attributable to the employer under Iowa law. Benefits are therefore denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 3, 2020 (reference 01) unemployment insurance decision is affirmed. Roslansky voluntarily left her employment without good cause attributable to Walmart. Benefits are withheld until such time as Roslansky has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Roslansky is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if she is eligible for such compensation for the week claimed. This decision does not address whether Roslansky is eligible for PUA. For a decision on such eligibility, she must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>



Ben Humphrey
Administrative Law Judge

July 22, 2020
Decision Dated and Mailed

bh/scn