

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER D WORLEY
Claimant

APPEAL NO. 15A-UI-00900-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/28/14
Claimant: Appellant (4/R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 13, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on February 13, 2015. Claimant participated. Cheryl Kirkland represented the employer and presented additional testimony through Nick Brungardt.

ISSUE:

Whether the claimant separated from the part-time employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time frozen dairy associate from March 2014 and last performed work for the employer during an overnight shift that was supposed to end at 7:00 a.m. on the morning of December 26, 2014. During that shift the assistant manager on duty concluded that the claimant had been smoking in a restroom in violation of the employer's policy and notified the claimant that she was discharged from the employment. The claimant challenged that decision and the store manager rescinded the discharge decision that same day. The store manager authorized the claimant to be absent from her overnight shift that was to start on the evening of December 26, 2014. The store manager notified the management staff that the claimant was authorized to be off work on December 26, 2014. The claimant was supposed to return for her next shift on the evening of December 28, 2014. The claimant did not return or make further contact with the employer. While the claimant asserts that someone notified her on December 26 that she had been a no-call/no-show and was discharged from the employment, the weight of the evidence indicates that no such call took place. The claimant elected not to return to the employer after concluding that she was being harassed at work. The claimant had complained about inappropriate comments made by an assistant manager and the assistant manager had been reprimanded. There were no further issues and no harassment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

Iowa Admin. Code r. 871-24.25(21) and (22) provide:

Voluntary quit without good cause. 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. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

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.

The evidence in the record indicates that the claimant voluntarily quit for personal reasons and without good cause attributable to the employer. The weight of the evidence did not support the claimant's assertion that someone told her she was discharged on the evening of the December 26, 2014. The claimant was unable to state with clarity who supposedly called her that evening. The claimant knew that the store manager had rescinded her discharge at her request and that the employer expected her to return on December 29, 2014. The claimant elected not to return because she did not like the work environment and one or more assistant managers. The matter concerning the assistant manager who had directed offensive comments toward the claimant had been resolved before the claimant's separation from the employment. The claimant was not being harassed by the management staff.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not requalified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base-period wages. See 871 IAC 24.27.

The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The employer's account shall not be charged for benefits paid to the claimant. The claimant is disqualified for benefits *based on base-period wages from this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant remains eligible for reduced benefits based on base-period wages from other employment, provided she meets all other eligibility requirements. This matter will be remanded for redetermination of the claimant's eligibility for reduced benefits.

DECISION:

The January 13, 2015, reference 01, is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The employer's account shall not be charged for benefits paid to the claimant. The claimant is disqualified for benefits *based on base-period wages from this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant remains eligible for reduced benefits based on base-period wages from other employment, provided she meets all other eligibility requirements. This matter is remanded for redetermination of the claimant's eligibility for reduced benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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