

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EFRAIN GUTIERREZ

Claimant

APPEAL NO. 06A-UI-10468-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 04/16/06 R: 04
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Efrain Gutierrez (claimant) appealed a representative's October 18, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2006. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 12, 1996, as a full-time maintenance person. The claimant did not like his work environment because a co-worker stared at him. The co-worker also said to the claimant, "I'm going to kick your butt." The claimant complained to the employer in early September 2006. The employer moved the co-worker to another area. After about a week the co-worker returned to the claimant's area. The claimant walked off the job on September 18, 2006, because the co-worker was harassing him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). Earlier in September 2006, the claimant notified the employer of the intolerable behavior of the co-worker. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 18, 2006 decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs