

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 FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02016-SWT
OC 01/18/04 R 02
Claimant: Appellant (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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 18, 2004, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 15, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeff Reynolds participated in the hearing on behalf of the employer with a witness, Roger Lamp.

FINDINGS OF FACT:

The claimant worked full time for the employer in the bakery department from April 1, 2003 to January 17, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant became the lead associate in the department on November 10. After she began working as the lead associate she became dissatisfied with the job because of the long hours, hard work, and stress involved in the job. On January 17, 2004, the claimant was scheduled to work from 8:00 a.m. to 5:00 p.m. She became upset after one of the bakery associates began screaming at her. She became overwrought and decided that she could no longer work that day and wanted a different job. She felt she was too emotional to continue to work or even talk to a manager. She wrote a letter to the store manager expressing her feelings and asking to be moved to different job. She left work at 9:23 a.m., without notifying a manager that she was leaving. She was absent from work without notice to the employer on January 18. The claimant called in before the start of her shift on January 19 and spoke with the store manager. They set up a meeting to talk later in the week. At that meeting, the store manager informed the claimant that she was terminated for leaving work on January 17 and failing to report to work on January 18 without notice to the employer, which the employer considered job abandonment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). I do not believe that the claimant intended to quit her job when she left work on January 17 and was absent from work on January 18. The separation must be treated as a discharge.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer

has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She left work without notifying a supervisor on January 17 and was absent from work without notice to the employer on January 18. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated February 18, 2004, reference 01, is modified with no change in the outcome of the case. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/b