

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON K PETERSEN

Claimant

APPEAL NO: 12A-UI-11834-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 08/26/12

Claimant: Appellant (4)

871 IAC 24.1(113)a – Layoff
Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Sharon K. Petersen (claimant) appealed a representative's September 25, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2012. The claimant participated in the hearing. Bobbi Smith appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 14, 2000. She worked full time as an overnight stocker in the employer's Council Bluffs, Iowa store. Her last day of work was on or about August 23, 2011.

The claimant had been injured in a work-related incident on September 28, 2010. She suffered injury to her left hip and left shoulder. She received benefits under the employer's workers' compensation carrier. During the period the claimant was under temporary work restrictions, she was allowed to continue to work in her regular position with temporary alternative duty accommodations. On about March 14, 2011 it was determined through the workers' compensation program that the claimant had reached maximum medical improvement and that she would have permanent work restrictions including no more than 30 minutes per hour of standing or stooping, no overhead lifting, no ladders, and no other lifting of more than 15 pounds. The claimant was temporarily allowed to continue working under the same temporary alternative duty accommodations, but was required to submit a request for a

determination as to what positions she could work with accommodation for her permanent restrictions.

On August 22, 2011 a response was received as to what positions the claimant could work with accommodation for her permanent restrictions; the only positions available with the employer that could meet those restrictions were as a people greeter or a fitting room attendant. As of August 26 the employer determined that it currently had no vacancy in those positions, so the claimant was placed on a leave of absence pending one of those positions becoming available either at that store or at a nearby store. The leave was only to extend for 90 days, through November 20, 2011. When there still was no opening for either of those positions by the end of that leave period, on December 2, 2011 the employer informed the claimant that her employment was ended.

The claimant established an unemployment insurance benefit year effective August 28, 2011. Upon expiration of that claim year she filed a second claim year effective August 26, 2012. The administrative law judge takes official notice of the issuance of another representative's decision on October 30, 2012 (reference 02), which concluded that the claimant had not earned at least \$250.00 in other employment since establishing her claim effective August 28, 2011, and so is not currently eligible to receive unemployment insurance benefits in her second claim year effective August 26, 2012.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The representative's decision concluded that the claimant was not discharged but that she voluntarily quit as of December 2, 2011. The claimant exhibited no intention to quit; it was the employer's choice, not the claimant's choice, to not find some other position for the claimant that would accommodate her restrictions caused by a work-related accident, and to then unilaterally place the claimant on the leave of absence and subsequently end the claimant's employment. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2.

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law or laid her off for lack of work.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer does not contend that the separation was due to any misconduct on the part of the claimant. Rather, the separation between the claimant and the employer was due to the employer's lack of work for the claimant that would meet her permanent restrictions caused by the work-related injury. Therefore, the separation, which in practical effect occurred on August 26, 2011 and was only further confirmed by the employer's actions on December 2, 2011, was a layoff by the employer due to the lack of suitable work for the claimant. As there was not a disqualifying separation, benefits are allowed as of August 28, 2011 if the claimant is otherwise eligible. The administrative law judge notes that as of August 26, 2012 the claimant is currently not otherwise eligible because of the lack of required additional wages since the establishment of the initial claim year effective August 28, 2011. The claimant can cure that ineligibility at any time during the current benefit year by establishing that she has subsequently earned at least \$250.00 in some other covered employment.

DECISION:

The representative's September 25, 2012 decision (reference 01) is modified in favor of the claimant. The claimant did not voluntarily quit and the employer did effectively lay off the claimant for lack of work. As of August 28, 2011 the claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. She is not currently otherwise eligible in her second benefit year due to the lack of wages earned since the initial benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs