

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD ROBERTS**

Claimant

**APPEAL NO: 09A-UCX-00015-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K MART CORP**

Employer

**OC: 08-10-08**

**Claimant: Respondent (5)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 30, 2009, reference 05, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 23, 2009. The claimant participated in the hearing. Mark Klein, Store Manager and Judy Huntington, Human Resources Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time loss control lead for K Mart from August 19, 2008 to May 27, 2009. He submitted his resignation notice May 18, 2009, effective June 10, 2009, because of a hostile work environment and he was taking on-line college classes. Assistant Manager Karen Neff persisted in calling him a “faggot” and saying she did not approve of his conduct outside of work when speaking about him to other associates. Additionally, another associate, Jamal, made inappropriate comments about the claimant's sexual orientation, including a slur, while on break. The claimant went to Store Manager Mark Klein to complain about his treatment and Mr. Klein said it “wasn’t any of (his) business and (he) didn’t want it in his house (K-Mart) and any future incidents needed to be taken off K-Mart grounds immediately.” The claimant felt the conversation made Mr. Klein “uneasy” and that he did not want to hear anymore about it. The human resources manager was on a personal medical leave and there was no one designated to act in her place. He chose not to use the employee hotline because the first conversation upset Mr. Klein and changed their working relationship and consequently he was afraid of retaliation. During the notice period the claimant accumulated his fifth and sixth attendance points when he was absent due to illness and provided doctor's excuses absences May 12 and May 16, 2009. After reporting the attendance situation to the corporate office Mr. Klein was given the choice of terminating the claimant's

employment immediately or letting him finish his notice period and made the decision to discharge him May 27, 2009.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with 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.

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. 871 IAC 24.25. Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant's assistant manager and at least one co-worker were referring to the claimant as a "faggot" and making comments about his sexual orientation and their disapproval of it to other associates. The claimant talked to the store manager about the problem but he did not seem supportive or willing to investigate the issue and testified the claimant "created drama in his own mind." Most situations like this are one employee's word against another's until an investigation is conducted and evidence is gathered by the employer. In this case the employer did not do a meaningful investigation after the claimant brought the problem to the store manager's attention and he did not give the claimant the impression he would do an investigation or entertain any further complaints. Under these circumstances the administrative law judge must conclude the claimant has met his burden of proving intolerable and detrimental working conditions. Benefits are allowed.

**DECISION:**

The June 30, 2009, reference 05, decision is modified with no effect. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs