

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L ZEPEDA
Claimant

APPEAL NO. 10A-UI-03868-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/07/10
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 9, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 21, 2010. Claimant participated. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 26, 2010. Claimant works for the employer with her spouse. They worked in different departments. They took their breaks together. Claimant's husband was written up for taking breaks with claimant. Claimant's husband was told that if she and her husband did not sever ties at work they would both face discharge. Claimant's husband appealed the warning to the store manager to no avail. The store manager said the warning would stick. Employer has no policy concerning employees taking breaks together. Other married couples at Wal-Mart take breaks together. Claimant quit because of the threat of both her and her husband facing discharge. After the complaint to the store manager claimant was followed by the assistant manager who gave the warning. Claimant felt she was being watched to get set up for discharge.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of harassment. The employer has no right to dictate what claimant does with her break times. There were no rules or policies prohibiting couples from spending break time together. Employer's failure to remove the warning and assure claimant that she would not face discharge if she took breaks with her husband is good cause for a quit. Employer has responsibility to provide a harassment-free work environment. After complaints employer did

not take prompt remedial action to resolve the harassment. This is a quit for good cause attributable to 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 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

DECISION:

The decision of the representative dated March 9, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css