

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS J FAIRCHILD**  
Claimant

**APPEAL NO: 11A-UI-01586-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 10/31/10**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's January 27, 2011 decision (reference 01) that concluded Travis J. Fairchild (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on March 8, 2011, and reconvened and concluded on March 16, 2011. The claimant participated in the hearing on March 8; however, when the administrative law judge called the claimant at the scheduled time for remainder of the hearing on March 16, 2011, the claimant was not available; therefore, he did not participate in the portion of the hearing held on March 16. Further, between March 16 and the date of this decision, he did not respond to the message left for him by the administrative law judge allowing him to provide any explanation as to why he had not participated in that portion of the hearing. Margaret Barnes of TALX Employer Services appeared on the employer's behalf on both dates and presented testimony from two witnesses, Audrey Agan and Daryl Davis. 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:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 11, 2007 in the employer's Knoxville, Iowa store. He sought and obtained a transfer to the employer's Pella, Iowa store in July 2009, and in March 2010 he sought and received assignment to a full-time overnight cashier position. His last day of work was November 1, 2010. On November 2 he verbally informed the employer that he was quitting and turned in his employment items, indicating he was done. He only indicated as his reason that there were "a lot of things going on."

The claimant asserted that he was being harassed by Mr. Davis, an assistant manager, by being told that he was not good enough to become a customer service manager. Mr. Davis

acknowledged that he had on occasion reprimanded the claimant for not working fast enough, and had recommended to him that he should dress more professionally, but it was not established as fact that Mr. Davis said or did anything that would arise to the level of harassment. However, when by October the claimant had not been awarded his desired customer service manager position, while other persons were so promoted, he believed it was because he was intentionally being overlooked.

The claimant was also unhappy about how a maintenance worker with special needs would tease him about some issues regarding the claimant's personal appearance. This had occurred in July 2010, and when the claimant complained to the employer's management, the management did address the issue with the maintenance worker, and the teasing did stop.

Finally, the claimant was unhappy that a day he had been absent in early October would not retroactively be paid as a sick day, as he had not designated it as a sick day at that time.

The claimant established a claim for unemployment insurance benefits effective October 31, 2010. The claimant has received unemployment insurance benefits after the separation.

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

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

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 claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Rather, his complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did

not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's January 27, 2011 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 2, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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