

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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Appeal Number: 04A-UI-06279-RT
OC: 05-09-04 R: 01
Claimant: Appellant (1)

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 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Ronda R. Blair, filed a timely appeal from an unemployment insurance decision dated May 26, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on July 8, 2004 with the claimant participating. The claimant was represented by Greg Sextro, Attorney at Law. Bryan Whitt, Store Manager in Denison, Iowa, participated in the hearing for the employer, Wal-Mart Stores, Inc. The employer was represented by David Williams of TALX UC eXpress. Claimant's Exhibit A was admitted into evidence. Claimant's Exhibit B was not admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department

unemployment insurance records for the claimant. The claimant had initially requested an in-person hearing but changed that request to a telephone hearing and a telephone hearing was held.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time stocker receiver overnight from September 23, 1998 until she voluntarily quit on May 11, 2004. The claimant quit because the employer had taken no action on a complaint she had filed on or about April 1, 2004 against an assistant manager, Ed Latta. On March 31, 2004, while the claimant was returning two girl size clothing outfits to its proper location in the store, she was loudly accused by Mr. Latta of attempting to shoplift the items. The claimant denied attempting to shoplift the items. Mr. Latta took the two items from her and took the claimant to his office but before they entered the office, the claimant, again, told Mr. Latta that she had not shoplifted. Mr. Latta said he would watch the videotape. He then told the claimant to go back to work and she did. During this period of time, the claimant was on a leave of absence for reduced hours working only 4 days a week because of stress. The employer approved the leave of absence. Thereafter, the claimant worked approximately two weeks but her stress increased and her medication was doubled and she went on a complete leave of absence. During this leave of absence, the claimant called the employer's witness, Bryan Whitt, Store Manager in Denison, Iowa, on May 5, 2004 and asked him what action, if any, the employer was going to take on her complaint. Mr. Whitt told the claimant that the employer was going to do nothing because they got statements from both the claimant and Mr. Latta and it was a "he said-she said" matter and nothing more was going to occur. The claimant then quit. The claimant's physician did not tell the claimant that she had to quit her position because of her stress. The claimant had never been accused before or after of shoplifting.

The claimant also testified that after the incident on March 31, 2004, she felt that she was ignored at store meetings and questioned when she was on her break, if she was on a break, and believed that her work environment in general was downgrading her. The claimant gave no specific examples. The claimant did express concerns about this incident when she filed the complaint, but at no time did the claimant ever indicate or announce an intention to quit if any of her concerns were not addressed.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(2), (3), (4), (6)a,b provide:

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:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.
- (6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

871 IAC 24.25(6), (21), (22), (28) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

The parties concede that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. Initially, the claimant testified that she left her employment because of an incident on March 31, 2004, when she was accused by an assistant manager, Ed Latta, of shoplifting. Mr. Latta did yell at the claimant and accuse her of shoplifting. The claimant explained that she had not shoplifted and, apparently, after that day, nothing more was said or done about the alleged shoplifting incident. The claimant had not been accused of this either before or after the incident on March 31, 2004. The claimant also testified that she quit because she was ignored at store meetings and was questioned if she was on a break when she was on a break and testified that she felt that her work environment, in general, after the incident, made her feel downgraded. However, the claimant gave no additional specific examples of anything occurring that caused her to quit. The claimant also quit because the employer took no action on a complaint she filed about this incident with the employer on April 1, 2004. The employer's witness, Bryan Whitt, Store Manager in Denison, Iowa, testified that the employer investigated the matter by taking statements from both the claimant and Mr. Latta and that it was a he said-she said matter and nothing more could be done under those circumstances.

The administrative law judge concludes that the one incident on March 31, 2004 during which the claimant was accused of shoplifting does not make the claimant's working conditions, by itself, unsafe, unlawful, intolerable or detrimental. The administrative law judge also concludes that the employer's failure to take action on the claimant's complaint after an investigation does not make her working conditions unsafe, unlawful, intolerable or detrimental. Although pushed, the claimant could provide no other specific examples of reasons for her quit or any other specific examples of improper treatment by Mr. Latta. The claimant testified that she was ignored at store meetings and questioned when she was on a break, and her work environment, in general, made her feel down graded. Without more specific evidence, the administrative law judge is constrained to conclude that these matters also do not make her working conditions unsafe, unlawful, intolerable or detrimental. The bottom line is that the claimant was once accused of shoplifting in a loud fashion but nothing else occurred.

Toward the end of the hearing, the claimant seemed to imply that she quit because of stress associated with her work. However, the claimant did not present competent evidence showing adequate health reasons to justify her quit. The claimant testified that her doctor did not say she had to quit. There is also no evidence that the claimant's stress was initially caused by the employer. The only evidence of a relationship to her employment was that her stress increased after this incident. The claimant had been on a leave of absence for restricted hours prior to the incident and went on a leave of absence thereafter, but there was also evidence that the claimant worked at least two weeks after the incident. There is also no evidence that the claimant properly informed the employer of her health problem, although the employer was

aware of it because of the leave of absence nor is there any evidence that the claimant indicated to the employer that she intended to quit unless the problem was corrected or otherwise reasonably accommodated. There is also no evidence that the claimant has ever returned to the employer and offered to go back to work. The administrative law judge concludes under these circumstances that the claimant does not meet the requirements of a voluntary quit with good cause attributable to the employer either because of an employment related illness or a non-employment related illness.

There is evidence that the claimant was unable to work with an assistant manager and that she was dissatisfied with her work environment and had a personality conflict with her supervisor. None of these reasons are good cause attributable to the employer. It also appeared that the claimant was, in effect, reprimanded, and leaving work voluntarily for a reprimand is not good cause attributable to the employer. Finally, there is no evidence that the claimant ever specifically indicated or announced an intention to quit if any problems she was having at work were not addressed by the employer, with sufficient opportunity for the employer to address her concerns.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of May 26, 2004, reference 01, is affirmed. The claimant, Ronda R. Blair, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

tjc/tjc