

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUG A SILVA
Claimant

APPEAL NO. 08A-UI-03783-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/16/08 R: 02
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's April 7, 2008 decision (reference 01) that concluded Doug Silva (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 2, 2008. The claimant participated personally. The employer participated by Joe Becker, Store Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was first hired in the Ankeny, Iowa, and later transferred to the Windsor Heights, Iowa, location as a full-time zone merchandise supervisor. During his employment in Windsor Heights, Iowa, he complained about "younger generation" employees who did not have the same "excellent work ethic" as himself.

The claimant is diabetic and had an insulin reaction at work in mid-February 2008. After being treated by paramedics he continued to work. On approximately February 25, 2008, the employer talked to the claimant about his negative attitude with subordinates. The claimant told the employer that it was due to his blood sugar level.

On March 1, 2008, the employer called the claimant into the office to discuss his continued negative attitude. The claimant treated a subordinate inappropriately when discussing the Ames store and other subordinates had complained about the claimant. The store manager and co-manager talked to the claimant about looking at alternative positions in the company. This was a discussion and the employer could not have changed the claimant's job title without his consent or progressive discipline. The claimant did not want to consider other positions because his hourly rate would be reduced. The claimant became upset, turned in his badge and punched out. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without 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 24.25(28) provides:

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:

(28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work after having been reprimanded, his leaving is without good cause attributable to the employer. The claimant left work after having been reprimanded. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's April 7, 2008 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw