

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WES E MAHAN
Claimant

APPEAL NO. 10A-UI-01971-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**Original Claim: 01/10/10
Claimant: Respondent (2-R)**

Section 96.5(1) - Quit

STATEMENT OF THE CASE:

The employer, Sears, filed an appeal from a decision dated January 28, 2010, reference 01. The decision allowed benefits to the claimant, Wes Mahan. After due notice was issued, a hearing was held by telephone conference call on March 18, 2010. The claimant participated on his own behalf. The employer participated by Store Manager Brad Harper.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Wes Mahan was employed by Sears from December 2, 2008 until November 23, 2009 as a part-time receiving associate. At the time of hire, he was told he would be "up for a raise" at the end of one year if his reviews were good. The raise might have been around three percent.

On November 23, 2009, the claimant asked Store Manager Brad Harper if it was true Sears had a wage freeze in place. The manager confirmed it was true and he did not know when it would be lifted. Mr. Mahan protested that he deserved a raise and Mr. Harper said no one in the company, not even the president or vice presidents, were getting a raise.

Later that day, Mr. Harper noted the claimant was missing and he questioned the other staff. One employee said the claimant had quit stating, "No raise, no Wes."

Wes Mahan has received unemployment benefits since filing a claim with an effective date of January 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

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(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.25(13) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The claimant quit because he felt he deserved a raise and would not stay with the wage freeze in place. Although Mr. Mahan might have gotten a raise at the end of one year, there was no firm guarantee of any raise or a specific amount of raise. In any event, the wage freeze was company-wide and he was not being treated any differently than anyone else. His wages were not lowered, they only remained the same.

There was no substantial change in the contract of hire. He was being paid the amount he was promised at hire. The record does not support any contention he was guaranteed a raise at the end of one year. The claimant quit without good cause attributable to the employer and he is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of January 28, 2010, reference 01, is reversed. Wed Mahan is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw