

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L PETERSON
Claimant

APPEAL NO. 10A-UI-09005-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/09/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 11, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 10, 2010. Claimant Gary Peterson participated. Joe Becker, Store Manager, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gary Peterson was employed by Wal-Mart as a full-time assistant manager from 2005 until February 24, 2010, when he voluntarily quit to relocate to Albia, Iowa, so that he could assist his elderly mother. On February 11, 2010, Mr. Peterson submitted his resignation via an e-mail message to Windsor Heights Store Manager Joe Becker. Mr. Peterson provided February 24, 2010 as his last day of employment. In the written resignation, Mr. Peterson cited the above reason as the basis for his voluntary quit. Mr. Peterson told the employer that his apartment lease was set to expire at the end of February, which factored into decision to relocate at that time.

Mr. Peterson was expected to work 45-48 hours per week. Mr. Peterson would elect to perform work at additional times when he was not required to work. The employer did not compel Mr. Peterson to work the additional hours.

The employer rotated assistant managers' shifts every year or so. Mr. Peterson was aware that this was part of the conditions of his employment as an assistant manager. On February 1, 2010, Mr. Becker notified Mr. Peterson that it was his turn to start working the overnight shift for a year. Mr. Peterson had worked the day shift, 8:00 a.m. to 8:00 p.m. for at least a year and a half. Prior to that, Mr. Peterson had worked the overnight shift. Mr. Peterson cites "peripheral overnight disease" as a factor in his decision to leave the employment. There is no indication

that Mr. Peterson provided the employer with any medical documentation of the purported health issue or that he requested an accommodation prior to resigning from the employment.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Mr. Peterson does much to undermine his own credibility. Mr. Peterson provided the employer with a straight-forward resignation memo that cited his desire to relocate close to his mother as the sole basis for his decision to quit the employment with Wal-Mart. During unemployment insurance proceedings, Mr. Peterson cites multiple bases—never mentioned to the employer during the course of the employment—for his decision to leave the employment.

The weight of the evidence indicates that Mr. Peterson voluntarily quit to relocate from the Des Moines metropolitan area to Albion. When a person voluntarily quits to relocate, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2).

The change in shift, in this case, did not represent a change in conditions of employment that would have made the voluntary quit for good cause attributable to the employer. See 871 IAC 24.26(1). Though there was a pending change in work hours, Mr. Peterson was well aware, long before the rotation announced on February 1, 2010, that as an assistant manager, he was expected to rotate shifts on an annual basis. Mr. Peterson had previously worked the overnight shift under this rubric. The evidence fails to indicate that Mr. Peterson apprised the employer of the health condition that purportedly prevented him from being able to work the overnight shift. The evidence fails to indicate that Mr. Peterson provided the employer with medical documentation of the purported condition or that Mr. Peterson requested accommodation prior to resigning from the employment. Thus, the evidence fails to establish good cause for the quit based on a medical condition. See Iowa Code section 96.5(1)(d) and 817 IAC 24.26(6). Finally, the weight of the evidence does not establish intolerable or detrimental working conditions that would have prompted a reasonable person to quit the employment. See 871 IAC 24.26(4). The weight of the evidence indicates that Mr. Peterson was expected to work 45-48 hours per week, but put in extra hours as he saw fit to better perform his duties. The evidence fails to establish that the employer compelled Mr. Peterson to work excessive hours.

Mr. Peterson voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Peterson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Peterson.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representatives June 11, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw