

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E WILLITS

Claimant

APPEAL NO. 08A-UI-10387-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 10/05/08 R: 01
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the October 27, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 20, 2008. Claimant participated. Chad Bennett, Club Manager, represented the employer and presented additional testimony through Kristy Plucker, Member Assistance Manager.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Willits was employed at the Sioux City Sam's Club as a full-time marketing representative from April 2, 2008 until August 10, 2008, when he voluntarily quit. Mr. Willits last performed work for the employer on August 8, 2008. Mr. Willits' decision to quit the employment was based on three incidents wherein he felt mistreated by his immediate supervisor.

Mr. Willits' immediate supervisor was Kristy Plucker, Member Assistance Manager. Mr. Willits' quit was based primarily on his personality conflict with Ms. Plucker. On June 24, 2008, Ms. Plucker met with Mr. Willits for the purpose of conducting Mr. Willits' first performance review. Mr. Willits had been under the impression that he would receive a raise in connection with his initial performance review. Prior to Mr. Willits' date of hire, the employer had discontinued awarding raises in connection with the initial performance review. A coworker had erroneously suggested to Mr. Willits that he might expect to receive a 50 to 75 cent per hour raise in connection with the review. Mr. Willits received a very positive performance review from Ms. Plucker. Mr. Willits was disappointed when he learned that his positive performance review would not result in a wage increase. After Mr. Willits learned that he would not be receiving a raise, he asked Ms. Plucker why she had shared his review information with another employee. Prior to the meeting to review his performance, the other employee had told Mr. Willits that Mr. Willits had received a positive review. Ms. Plucker had not shared such information with the other employee and told Mr. Willits that she had not shared the information with the employee. Mr. Willits asserted that Mr. Plucker had in fact shared ostensibly confidential information.

Mr. Willits' assertion angered Ms. Plucker, who threw a tablet or clipboard. Ms. Plucker told Mr. Willits that she was going to summon Club Manager Chad Bennett to the meeting and Mr. Bennett joined the meeting. Mr. Bennett had been the person who had hired Mr. Willits. Mr. Bennett apologized to Mr. Willits for anything he might have done to lead Mr. Willits to believe that he would get a raise in connection with the initial performance review.

Mr. Willits continued in the employment for more than a month after the performance review. Mr. Willits' personality conflict with Ms. Plucker continued. Mr. Willits inquired with the employer about transferring to a different position. Mr. Willits was interested in a daytime receiving clerk position. Mr. Willits was under the impression that the receiving clerk position was full-time, but it was part-time. The position was not due to open until September. Mr. Willits asked Ms. Plucker for the written job description for the open position. The only position the employer had open at the time was an overnight stocking position. Mr. Willits was not interested in the overnight stocking position. Mr. Willits subsequently learned that another employee had been granted a transfer to the day receiving clerk position. Mr. Willits concluded that Ms. Plucker had somehow cheated him out of the day receiving clerk position.

At the end of July, Mr. Willits and another employee were assigned to market club memberships at the Plymouth County Fair. On Saturday, July 26, the other employee told Mr. Willits that Ms. Plucker wanted him to complete a particular work form by Monday "or else." Ms. Plucker had not in fact asked the employee to carry a message to Mr. Willits. On Sunday, July 27, Mr. Willits drove to the workplace and completed the form. Mr. Willits was not scheduled to work on July 27. Ms. Plucker did not expect Mr. Willits to come to the workplace or perform any work on his scheduled day off. Mr. Willits subsequently learned that another employee had been told by Ms. Plucker not to worry about completing the form while that employee was working at the Plymouth County Fair. Mr. Willits erroneously concluded that Ms. Plucker had singled him out for disparate treatment.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, where a person voluntarily quits because of a personality conflict with a supervisor or due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22) and (21).

The evidence indicates that there were indeed some significant misunderstandings and miscommunications during the employment. The weight of the evidence fails to establish intolerable and/or detrimental working conditions. The weight of the evidence indicates that Mr. Willits' voluntarily quit was prompted by his personality conflict with his immediate supervisor. Mr. Willits attributed to Ms. Plucker ulterior motives and nefarious deeds. Mr. Willits was eager to interpret events in a manner that would allow him to find fault with his immediate supervisor. However, Mr. Willits' allegations and conclusions are not supported by the evidence in the record. The evidence fails to establish that Ms. Plucker did anything inappropriate in connection with Mr. Willits' performance review. The evidence indicates that Mr. Willits may have formed a reasonable belief that he could expect a raise in connection with his performance review. However, the evidence indicates that Mr. Willits continued to work for the employer several weeks after the performance review and the associated denial of a raise. By continuing in the employment, Mr. Willits' acquiesced in the employer's new performance review policy. See 871 IAC 24.26(1) and Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990). The weight of the evidence fails to establish that Ms. Plucker did anything inappropriate in connection with Mr. Willits' transfer request or completion of the work form.

Mr. Willits voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Willits 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. Willits.

DECISION:

The Agency representatives October 27, 2008, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css