

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

JUDY K REED
2216 RACINE AVE
BURLINGTON IA 52601

WAL-MART STORES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

AMENDED

Appeal Number: 05A-UI-06106-JTT
OC: 05/15/05 R: 04
Claimant: Respondent (2)

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 Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Wal-Mart filed a timely appeal from the May 31, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 22, 2005. Judy Reed participated in the hearing. Assistant Manager Bobbi Frank represented Wal-Mart. Exhibit One was received into evidence.

FINDINGS OF FACT:

Judy Reed was employed by Wal-Mart as a part-time cashier from March 18, 2005, until May 15, 2005, when she voluntarily quit due to perceived intolerable and detrimental working conditions.

On May 5, 2005, Ms. Reed was working a 5.5-hour shift and was scheduled to leave at 5:00 p.m. Ms. Reed was provided a lunch break, but did not receive an afternoon break. Ms. Reed has health problems that make it uncomfortable for her to stand for extended periods. When the customer service manager overlooked her afternoon break, Ms. Reed did nothing to alert the customer service manager that she had missed the break. Ms. Reed had a light and telephone at her register with which she could have summoned a customer service manager. At 4:45 p.m., Ms. Reed turned on the light at her register to summon the customer service manager and alert him that she was scheduled to leave at 5:00 p.m. When Ms. Reed mentioned the missed break, the customer service manager apologized and asked Ms. Reed to close her register and take a paid break during the remaining fifteen minutes of her shift. Ms. Reed used the time to complain to a manager about being ill treated by the customer service manager due to the overlooked break and threatened to quit. The management staff persuaded Ms. Reed to continue in the employment. The management staff counseled the customer service manager regarding the overlooked break.

During part of her shift on May 5, Ms. Reed had been assigned to work in the can redemption area. This work was included in the cashiers' duties and most, if not all, of the cashiers took turns working in this area of the store. Wal-Mart provided rubber gloves and aprons for employees to wear when working in this area. Wal-Mart also provided hand sanitizer. Ms. Reed considered the work filthy, disgusting, and unsanitary, and announced that she did not think Wal-Mart should be in the can redemption business. When Ms. Reed protested to Assistant Manager Bobbi Frank, Ms. Frank reminded Ms. Reed that, as a cashier, Ms. Reed was expected to take her turn, and that can redemption was a service Wal-Mart offered to meet the needs of its customers.

During another shift, Ms. Reed had been assigned to work in the inside gardening department. Ms. Reed advised the customer service manager that she had allergies. The customer service manager asked Ms. Reed to work in the area for a short time while other cashiers were on break, and to alert the customer service manager if she experienced problems with her allergies. Ms. Reed was upset that she had been put to work in an unfamiliar department without a price list. Ms. Reed contacted the customer service manager regarding the need for a price list and was advised where the price list was located. After Ms. Reed finished her work in the gardening department, she advised the customer service manager that she had in fact experienced problems with her allergies while working in the department. Ms. Reed had taken no prior steps to alert the customer service manager that she was experiencing a problem. The customer service manager advised Ms. Reed that she would do her best not to schedule Ms. Reed in the gardening department.

On May 14, Ms. Reed started her shift at 12:30 p.m. A couple hours into her shift, Ms. Reed needed a break and turned on her light to summon a CSM. However, the register lanes were very busy at the time and the customer service manager did not notice Ms. Reed's register light. Though Ms. Reed also had access to the telephone and public announcement system from her register, knew how to use the system, and had in fact used the system during her employment, Ms. Reed did not use this system to summon a customer service manager and request a break. At 2:45 p.m., a customer service manager advised Ms. Reed that she should clock out for her lunch break. Ms. Reed complained about not receiving her first break. The customer service manager had not provided Ms. Reed with a break because she thought Ms. Reed was scheduled to leave at 4:30 p.m. and, therefore, would not get a break in addition to her lunch break. When Ms. Reed pointed out that she was not scheduled to go home at 4:30, the customer service manager acknowledged the error and indicated she had confused

Ms. Reed with another employee with the same last name. Ms. Reed was still angry about the missed 15-minute break when she returned from her lunch break. A short while later the customer service manager asked Ms. Reed whether she would be willing to work until 9:00 p.m. Ms. Reed agreed to stay. Ms. Reed then spent the remainder of the evening angry that she had been asked to stay.

When Ms. Reed had arrived for work on May 14, she had noticed that she was scheduled to work on June 3, a day she had requested off for a medical appointment. Ms. Reed did not bring the scheduling error to the attention of the head customer service manager, who was responsible for the schedule. Instead, Ms. Reed complained to a person with whom she had interviewed, and that person agreed to look into the matter. It was the store's policy to honor requests for time off for medical appointments. Ms. Reed quit the employment before the scheduling error could be addressed and corrected.

On May 14, Ms. Reed had also been upset because the upcoming schedule had her working 29.5 hours in a week and she wanted to work no more than 28. Ms. Reed receives disability benefits and wanted to limit her earnings to \$100.00 so that her benefits would not be affected. Wal-Mart had based Ms. Reed's work schedule on the availability information she had provided at the start of the employment. Wal-Mart had consistently scheduled Ms. Reed to work 28 to 33 hours per week. Once Ms. Reed made an oral request for no more than 28 hours per week, Wal-Mart attempted to accommodate the request. Ms. Reed had acknowledged Wal-Mart's efforts to keep her hours close to 28, but was dissatisfied that the issue had not been resolved once and for all. Despite the fact that Ms. Reed had not followed the established procedure for resubmitting her availability information, the Wal-Mart staff agreed to enter the appropriate scheduling information in Wal-Mart's computerized scheduling system.

When Ms. Reed arrived for work on May 15, the night supervisor assigned Ms. Reed to work in the can redemption area. When Ms. Reed arrived in the can redemption area, there was no hand sanitizer available and no apron. Instead of requesting the appropriate supplies, Ms. Reed returned to the night customer service manager and told that person she was "done." The customer service manager asked Ms. Reed to speak to someone in management about her concerns before she quit the employment, but Ms. Reed was not willing to do that. Ms. Reed announced that she had spoken to management about missing a break and had then missed another break, and was not going to speak to them again. Ms. Reed left the workplace and did not return.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Reed quit the employment for good cause attributable to the employer. It does not.

A person who voluntarily quits employment is disqualified for benefits unless the quit is determined to be for good cause attributable to the employer. See Iowa Code Section 96.5(1).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.25(4). However, before such a quit will be considered for good cause attributable to the employer, the evidence must show that before the claimant resigned (1) the employer was on notice of the condition, (2) the employer was on notice that the claimant might quit if the condition was not addressed, and (3) the employer had a reasonable opportunity to address the claimant's legitimate concerns. See Suluki v.

Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993); and Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996). 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).

If a claimant quit 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(21). If the claimant quit rather than perform the assigned work as instructed, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(27).

The evidence in the record establishes that Ms. Reed quit the employment due to circumstances that a reasonable person would not have found intolerable or detrimental. Ms. Reed faulted the employer for overlooking two breaks in the course of a two-month employment, but failed to utilize means available to her on those occasions to request a break. Ms. Reed faulted the employer for scheduling her for too many hours, but Ms. Reed caused the situation by providing information to the employer that indicated she had open availability. When Ms. Reed brought the problem to the attention of the employer, the employer indicated a willingness to accommodate Ms. Reed's limited availability and to continue to work with Ms. Reed on that issue. In any event, the additional hours were minimal. A reasonable person would not have quit the employment based on this issue, but would have continued to work with Wal-Mart on the issue. Ms. Reed faulted Wal-Mart for scheduling her on a day she had requested off. This was a scheduling mistake, not an intentional act on the part of Wal-Mart. The date Ms. Reed needed off was more than two weeks in the future. A reasonable person would not have quit the employment based on this issue, but would have brought the error to the attention of the employer and worked with the employer to resolve the problem. Ms. Reed faulted the employer for requiring her to work as a cashier in the can redemption area and for not stocking supplies. However, the can redemption work was one of the duties assigned to the cashiers. A reasonable person would not have quit the employment based on this issue, but would have taken responsibility for requesting and/or restocking supplies readily available in the store.

Based on the evidence in the record and the law cited above, the administrative law judge concludes that Ms. Reed quit the employment due to overall dissatisfaction with the work environment and because she did not want to perform her assigned duties. The quit was without good cause attributable to the employer. The employer's account will not be charged for benefits to Ms. Reed.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

If Ms. Reed is monetarily eligible for benefits and has wage credits from employers other than Wal-Mart, she may be eligible for reduced benefits. If Ms. Reed is eligible for reduced benefits, this may reduce the amount of the overpayment. Ms. Reed should contact her local Workforce Development Center for a determination of her eligibility for reduced benefits.

DECISION:

The Agency representative's May 31, 2005, reference 01, decision is reversed. The claimant voluntarily quit her part-time employment without good cause attributable to the employer. The employer's account will not be charged for benefits paid to the claimant. The claimant's quit was a disqualifying event.

jt/kjw