

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRIE A LAWRENCE
Claimant

APPEAL NO. 08A-UI-01577-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/20/08 R: 02
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 11, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 3, 2008. Claimant participated. Employer participated through Laurie Iverson.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time cashier from June 20, 2006 until January 19, 2008 when she quit. She returned to work on January 19 after two days off and a disciplinary decision day on January 16 because of an exchange that was approved by supervisor Tracey. When claimant reported for work on January 19, Tracey taunted her by reporting she did not get any discipline for the incident. Additionally, security officer Joe was following her around the store as if she was stealing. She confronted him and he said, "I'm sorry you feel that way," and walked off. She told Tracey she was quitting and Tracey apparently did not report the separation to human resources. Claimant had attempted to ask Iverson a question on an earlier occasion and was rudely interrupted by a manager who cut off the question.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code § 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(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Where claimant was required to work in two separate positions and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989).

The disparate application of discipline to claimant and not to the supervisor that allowed the exchange, the supervisor's taunting of claimant about the issue and the security guard's behavior all created an intolerable work environment for claimant and that behavior gave rise to a good cause reason for leaving the employment. Employer reasonably knew of these issues since they were initiated by supervisory or management personnel. Benefits are allowed.

DECISION:

The February 11, 2008, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css