

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLENE A LEUER
Claimant

APPEAL NO. 10A-UI-16987-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10/10/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 6, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 24, 2011. Claimant participated. Employer participated by John “Matt” Finkeldei, Shift Manager, and Kerry Misiag, Human Resources Manager. The record consists of the testimony of Charlene Leuer; the testimony of John Finkeldei; and the testimony of Kerry Misiag.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as an assistant manager at the Wal-Mart store in Clinton, Iowa. Her last day of work was October 12, 2010. She quit her job on October 12, 2010. She did not give notice to her employer prior to quitting.

The claimant had begun working the night shift in July 2010. She had a lot of responsibility as an assistant manager on the night shift. She was responsible for entering information into the computer on the amount of work completed by the associates. She also had to unload freight, when necessary, and assist other associates in the store.

On October 12, 2010, the claimant had just finished working the night shift and she was physically exhausted. As she was leaving the store, she heard another shift manager complain about an assistant manager on the day shift. This shift manager made a comment that she was “going to fire them all and start from scratch.” This comment upset the claimant. She turned around and went to human resources to turn in her keys. She said that she was “outta here.” Work was available for the claimant at the time she quit her job.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence was uncontroverted that it was the claimant who initiated the separation of employment. She heard a comment made by another shift manager about another assistant manager and she became very upset. She felt unappreciated as an employee, especially after she had worked so hard all night. She gave her keys to Kerry Mischaig and said she was "outta here."

The issue, therefore, is whether the claimant voluntarily left for good cause attributable to the employer. The claimant had been working the night shift since July 2010 and she said that while she liked the shift, she did have difficulty sleeping during the day. She was under pressure at work due to what she perceived as unrealistic demands of the associates she supervised by both management at the store and the employer. Daily report cards were done on productivity and the claimant did not agree with the way that she was told to record time. She also felt that management did not appreciate her efforts and those of the other employees. The comment made by the shift manager that she was going to fire all the assistant managers and start over upset the claimant, particularly since she was not a problem employee.

The administrative law judge can certainly understand why the claimant was upset about the comment. The comment was insensitive, but most likely was just frustration on the part of that supervisor. There was no evidence that the claimant was in danger of losing her job. Stress due to performance expectations and lack of personnel are common in the workplace. There was not enough evidence in this record for the administrative law judge to conclude that the claimant's workplace was so intolerable and detrimental that good cause can be attributed to the employer. Benefits are denied.

DECISION:

The decision of the representative dated December 6, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css