

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

TONI M HOEPPNER
327 E MULLAN AVE
WATERLOO IA 50703

WAL-MART STORES INC
c/o TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-06362-RT
OC: 05-16-04 R: 03
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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated May 28, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Toni M. Hoepfner. After due notice was issued, a telephone hearing was held on July 2, 2004, with the claimant participating. Bob Brokaw, Store Manager at Store Number 753 in Cedar Falls, Iowa, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development insurance records for the claimant. Employer's Exhibits 1 and 2 were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant was employed by the employer, most recently as a full-time overnight stocker, from May 28, 2003 until she voluntarily quit on May 16, 2004. On May 16, 2004, the claimant wrote and delivered a memo of resignation, as shown at Employer's Exhibit 1. The claimant quit because her supervisors, Todd Hitchings, Support Team Manager, and Bill Reese, Assistant Manager, pushed the claimant to do her work faster. The claimant had been the department manager for the frozen food department until November 2003, when she requested that she be transferred as a night stocker for the frozen food. This transfer was granted by the employer's witness, Bob Brokaw, Store Manager for Store Number 753 in Cedar Falls, Iowa. The claimant had difficulty in keeping up with the work. The claimant had to unload and stock on the shelves anywhere from two to six pallets of frozen merchandise each night. The claimant had difficulties in doing so. Mr. Hitchings and Mr. Reese pushed the claimant to work faster and do more. The claimant testified that she believed that they were harassing her because they kept telling her to work faster and that others could do her work faster. The amount of frozen merchandise fluctuated during the year, but on a regular basis the employer got between 2½ to 4 pallets of frozen food per night. Mr. Brokaw testified that the claimant had difficulty in unloading and stocking even two or three pallets. The claimant testified that she had trouble stocking six pallets.

Mr. Hitchings and Mr. Reese did complain to Mr. Brokaw about the speed of the claimant's work and that she would take the whole night to unload and stock two, or three, or four pallets. Mr. Brokaw told them to evaluate why the claimant was having such difficulty. They discovered that the claimant was not staying in the department sufficient to get her work done. In fact, the claimant received a coaching, which is a written warning at Employer's Exhibit 2, for taking too long of a break. The claimant testified that she had to give up her breaks or skip her breaks to get her work done. The claimant testified that she did not have any trouble working for the prior assistant manager, Ryan Rand, but Mr. Rand also complained to Mr. Brokaw about the claimant's speed in working. Among the duties of the support team manager and the assistant manager was to see that all the work was done properly and timely. The employer offers some assistance called "zoning," which helps stock shelves, and this was made available to the claimant on occasion.

The claimant never expressed any concerns directly to Mr. Brokaw about these matters. The claimant requested a transfer in November 2003, which was approved and then the claimant would come in and check other job postings, but never specifically indicated any particular problems to Mr. Brokaw, nor did she ever threaten or announce an intention to quit if problems she was having at work were not addressed. The claimant did speak to Mr. Hitchings approximately one week before she quit. The claimant told him that she wanted him to stop telling her that she was not going fast enough and that this made her feel belittled. Mr. Hitchings told the claimant that he did not feel that he was making her feel that way. The claimant indicated that she was on the verge of quitting to Mr. Hitchings. Approximately one week later, the claimant quit. The claimant expressed no other concerns to anyone else, nor did she ever indicate or announce an intention to quit to anyone else. The claimant was not told that she could be or would be fired or discharged for the speed at which she was working. Pursuant to her claim for unemployment insurance benefits filed effective May 16, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,095.00 as follows: \$219.00 per week for five weeks from benefit week ending May 22, 2004 to benefit week ending June 19, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

871 IAC 24.26(2), (3), (4) provide:

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:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

871 IAC 24.25(21), (22), (28), (33) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.
- (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The parties concede that the claimant voluntarily left her employment. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on May 16, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she left her employment only because her supervisors, Todd Hitchings, Support Team Manager, and Bill Reese, Assistant Manager, were "harassing" her because she was not working fast enough and not getting her work done. The claimant testified that she was expected to unload and stock six pallets per night and could not do so. However, the evidence indicates that the claimant had some difficulty in unloading and stocking any amount of pallets and it would take her all evening to do the work whether it was two, three, or four pallets. Further, Mr. Brokaw testified that on a regular basis the employer usually received between 2½ and 4 pallets per night. Mr. Brokaw conceded that the inventory or merchandise received by the employer fluctuated during the year, but on a regular basis it was 2½ to 4 pallets of food. This was what the claimant was responsible to unload and stock. The claimant testified that the two managers were always telling her that she was not going fast enough and comparing her to others when they would say that others could do it faster. The claimant objected to being compared to others. The managers did indicate to the store manager, Bob Brokaw, the employer's witness, that they were concerned about the claimant's speed. Mr. Brokaw told them to evaluate why the claimant was not getting her work done. They reported back that the claimant was not staying enough time in her department and in fact, the claimant even got a coaching for improvement or a written warning for taking too long a break, as shown at Employer's Exhibit 2. The claimant conceded that she got that warning, but also testified that she gave up some of her breaks to get her work done.

Although it is a close question, the administrative law judge is constrained to conclude on the evidence here that the claimant has not demonstrated by a preponderance of the evidence that the actions of Mr. Hitchings and Mr. Reese made her working conditions unsafe, unlawful, intolerable or detrimental. The claimant denied that she had difficulty doing two, or three, or four pallets, and only had difficulty doing six pallets. The claimant's testimony here is not credible. First, the evidence indicates that the employer regularly received between 2½ and 4 pallets. Further, there was evidence that the claimant took up the whole night to unload two, three, or four pallets. Finally, and most convincing, the claimant said she had no trouble in doing her work under a prior assistant manager, Ryan Rand. However, Mr. Brokaw credibly testified that Mr. Rand had also complained about the claimant's speed at work. Even though the employer was dissatisfied with the claimant's speed of work, the claimant was not facing discharge and no one had told the claimant that she could or would be fired or discharged because she was working too slowly. The claimant testified that she had no help, but the evidence shows that under the employer's "zoning" procedure, help was given to the claimant at least in terms of stocking the shelves.

The claimant testified that she never expressed any specific concerns about these matters to anyone but Mr. Hitchings, nor did she indicate or announce an intention to quit to anyone but Mr. Hitchings, and this, only one week before her quit. The administrative law judge does not believe that this is sufficient to allow the employer to address her concerns, especially in view of the substantial question as to whether the claimant was working to the best of her abilities. The

claimant testified that she asked for a transfer from Mr. Brokaw because her morale was low, but said nothing more and Mr. Brokaw denied that the claimant ever indicated that her morale was low. Mr. Brokaw did concede that the claimant asked to be transferred from her position as department manager for the frozen food department and transferred to just stocking the frozen food, and he granted this request.

The administrative law judge concludes that the claimant's working conditions were not sufficiently unsafe, unlawful, intolerable or detrimental to justify her quit. The administrative law judge also concludes that the claimant did not give the employer sufficient opportunity to address any of her concerns before her quit. Further, there is evidence that the claimant was dissatisfied with her working environment and that she had a personality conflict with her supervisors but these are not good cause attributable to the employer. The claimant was reprimanded approximately one week before her discharge; but leaving work because of a reprimand is not good cause attributable to the employer. Finally, leaving work voluntarily because the claimant felt that her job performance was not to the satisfaction of the employer is not good cause attributable to the employer if the employer has not requested the claimant to leave and continued work was available. There is no evidence that the employer had ever asked the claimant to leave or that the claimant was facing imminent discharge.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,095.00 since separating from the employer herein on or about May 16, 2004, and filing for such benefits effective May 16, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision dated May 28, 2004, reference 01, is reversed. The claimant, Toni M. Hoepfner, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits, because she left work voluntarily without good cause attributable to the employer. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,095.00.

bp/b