

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L SCHUTTLE
Claimant

APPEAL NO. 10A-UI-03605-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/20/09
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated February 22, 2010, reference 02, which held that no disqualification would be imposed regarding Jennifer Schuttler's separation from employment. After due notice was issued, a hearing was held by telephone on April 22, 2010. Ms. Schuttler participated personally. The employer participated by Karen Parcher, Pharmacist, and Lori Taylor, Assistant Manager.

ISSUE:

At issue in this matter is whether Ms. Schuttler was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Schuttler began working for Wal-Mart on January 17, 2009. She worked full time as a sales floor associate. She was on medical leave from September 4 through September 15 because of back problems. She was released to work without restrictions but did wear a back brace. She told the employer she might have surgery in the future but planned to work until the surgery. Ms. Schuttler never told the employer she felt her back condition might be related to the employment.

After her return from medical leave, Ms. Schuttler experienced periodic muscle spasms in her back if she exerted herself. She did not bring her problems to the attention of her supervisor. She did speak with human resources about making a job transfer. She never told the employer she would quit if not accommodated. On September 29, Ms. Schuttler voluntarily quit the employment. At that time, she was helping take care of her mother, who was experiencing health issues. She told the employer she could not handle taking care of her mother and dealing with her own back issues. Continued work would have been available if she had not quit.

Ms. Schuttler filed a claim for job insurance benefits effective December 20, 2009. She has received a total of \$352.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). According to Ms. Schuttler, the primary reason she quit was the need to assist in her mother's care. An individual who leaves employment due to serious family needs or responsibilities is presumed to have left employment without good cause attributable to the employer. 871 IAC 24.25(23).

Part of the reason for Ms. Schuttler's quit was the fact that she was having problems with her back when she exerted herself at work. Although she sought a transfer, she never put the employer on notice that she would quit if her back condition was not reasonably accommodated. Therefore, she deprived the employer of the opportunity to make changes in her job to avoid aggravating her back. For this reason, the fact that she was experiencing back problems did not constitute good cause attributable to the employer of quitting. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). After considering all of the evidence, the administrative law judge concludes that Ms. Schuttler quit her employment without good cause attributable to the employer. As such, benefits are denied.

Ms. Schuttler has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated February 22, 2010, reference 02, is hereby reversed. Ms. Schuttler quit her employment with Wal-Mart for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Schuttler will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css