

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA S DANNER
Claimant

APPEAL NO. 10A-UI-08244-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/09/10
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 May 28, 2010, reference 01, which held that no disqualification would be imposed regarding Amanda Danner's separation from employment. After due notice was issued, a hearing was held by telephone on July 27, 2010. The employer participated by Vicki Pospis, Assistant Manager, and Nicole Annis, Personnel Coordinator. Ms. Danner did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Danner 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. Danner began working for Wal-Mart on March 12, 2009 and was last employed full time as customer service manager. Her last day of work was April 20, 2010 and she was next scheduled to work on April 21. She did not report for work on April 21 but did come in on April 24 to get paperwork to apply for a leave of absence. She wanted to take April 24 through 27 off because of her son's health.

The employer did not hear from Ms. Danner until approximately one week later. She indicated she wanted to return to work but did not return the paperwork for the leave of absence. She was told she would need to have the paperwork completed in order to excuse her absences after April 20. She indicated she would get the paperwork completed and return. The employer has not heard from her since that date. The employer has a written work rule that three consecutive unreported absences will be considered a voluntary quit.

Ms. Danner filed a claim for job insurance benefits effective May 9, 2010. She has received a total of \$1,582.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Ms. Danner abandoned her job when she stopped reporting for available work. In spite of not having called in for several shifts, she could have continued the employment if she had brought in the leave of absence paperwork as requested by the employer. Although she told the employer she was going to get it, she never returned. It is concluded, therefore, that she voluntarily quit the employment. 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).

The evidence of record does not establish any good cause attributable to the employer for Ms. Danner's quit. The administrative law judge has considered whether she qualifies for benefits under any exception created by law. She did not participate in the hearing to establish that the absences after April 20 were due to a compelling personal reason within the meaning of Iowa Code section 96.5(1)f. Since she did not return the paperwork to take a leave of absence, the administrative law judge has to question whether there was a compelling personal reason that caused her to be away from work. Ms. Danner had the burden of proving that she was not disqualified for benefits under section 96.5(1)f. See Iowa Code section 96.6(2). She has not satisfied the burden of proof.

After considering all of the evidence, the administrative law judge concludes that Ms. Danner quit her employment with Wal-Mart for no good cause attributable to the employer and is not eligible to receive benefits under any exception created by law.

Ms. Danner 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 May 28, 2010, reference 01, is hereby reversed. Ms. Danner quit her employment without 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. Danner will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs