

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSEY K MPINGE
Claimant

APPEAL NO. 10A-UI-12247-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/25/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 20, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 19, 2010. Claimant participated and presented additional testimony through Tim Miller. Laurie Janovec represented the employer and presented additional testimony through Jacqueline Clair. Exhibits One through Five were received into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Wal-Mart as a full-time pharmacy technician from 2008 and last performed work for the employer on May 28, 2010. The claimant's immediate supervisor was Pharmacist John White. The claimant commenced an approved leave of absence that was set to expire on June 22, 2010. June 22 was the expected return-to-work date. In connection with the initial leave period, the claimant had delivered an incomplete leave application packet to the employer on June 15. The claimant desired to extend her leave. The employer communicated directly with the claimant on June 25 about the request to extend the leave. The claimant indicated at that time that she would submit a second leave of application packet with updated information from her doctor. The claimant told the employer she would get back to the employer the same day, but did not do that. Claimant took no further steps to assure that the employer had received updated medical information to support the need for the continued leave. The claimant had undergone outpatient surgery on June 22, 2010. The claimant's doctor had released the claimant to return to work without restrictions after a two- to three-day recovery time. The claimant understood that the employer's approval of the leave extension was conditioned upon the employer receiving supporting medical documentation in a timely manner.

The employer made multiple attempts to reach the claimant on and after June 28, 2010. The employer made an attempt to reach the claimant on June 29. The employer mailed a letter to

the claimant on July 2. Mr. White left a telephone message for the claimant on July 2. The employer received its letter back as undeliverable on July 10, 2010. The claimant had moved without providing a forwarding address. On July 24, another associate, a friend of the claimant's, asked the employer about the claimant's leave of absence paperwork. The employer declined to discuss the matter with the friend but indicated the claimant was welcome to call to discuss the employee's status. The employer waited until August 2, 2010 before the employer concluded employment was ended.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

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.

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 weight of the evidence in the record establishes a voluntary separation from the employment. The administrative law judge notes that the claimant provided testimony that was inconsistent with the doctor's note that she had earlier provided to workforce development. The doctor's note clearly indicates that the claimant was released to return to work within two or three days after the June 22 outpatient surgical procedure. In other words, there was no basis to extend the leave of absence beyond June 25. The weight of the evidence in the record indicates that the claimant failed to return at the end of an approved leave of absence. The claimant's failure to return at the end of an approved leave of absence was a voluntary quit. The evidence fails to indicate the claimant's voluntary quit was based upon the advice of a physician or that

the claimant had some health issue that necessitated her separation from employment. The claimant voluntarily quit the employment without good cause attributable to the employer. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's August 20, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw