

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLENE L LANDIS**

Claimant

**APPEAL NO. 13A-UI-02360-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 01/06/13**

**Claimant: Respondent (2-R)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 18, 2013, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on March 26, 2013. Claimant Charlene Landis participated. Shannon Ferguson represented the employer. Exhibits One, Two, Three, A, B and C were received into evidence. The administrative law judge took official notice of the agency's administrative record (DBRO) of wages reported by or for the claimant and benefits disbursed to the claimant.

**ISSUES:**

Whether Ms. Landis separated from her full-time employment with Wal-Mart for a reason that disqualifies her for unemployment insurance benefits.

Whether Ms. Landis has been able to work and available for work within the meaning of the law since she established her claim for benefits.

Whether Ms. Landis has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Charlene Landis commenced working for the Altoona Wal-Mart in 2003. Ms. Landis commenced an approved leave of absence on December 19, 2012. Prior to commencing the approved leave of absence, Ms. Landis notified the employer she no longer wanted to work in her full-time department manager position and was voluntarily separating from that position. The position had paid \$12.96 per hour and the work hours had been 7:00 a.m. to 4:00 p.m., Monday through Friday. Ms. Landis did not like the full-time hours or the stress that went along with the position. At the time Ms. Landis commenced her leave of absence, she did so with the understanding that the employer would be posting her full-time department manager position based solely on her decision to voluntarily separate from the position. But for Ms. Landis' decision to leave the full-time position, the employer would have continued her in that position. Prior to commencing

the approved leave of absence, Ms. Landis told the employer that after her leave of absence ended, she wanted to return to a part-time position of some kind. The employer made sure that Ms. Landis understood that the hours available for a part-time position in January would be substantially fewer than the full-time hours available to department managers in January.

Ms. Landis cited chronic back problems and her 83-year-old mother's December 31, 2012 heart procedure as the basis for her need for the leave of absence. Ms. Landis' mother was supposed to undergo replacement of a pacemaker. The employer approved a leave of absence through January 1, 2013. When Ms. Landis did not contact the employer at the beginning of January 2013, the employer commenced its attempts to contact her about her return to work.

Ms. Landis contacted the employer on January 7, 2013 and said she was ready to return to work. Because Ms. Landis' leave of absence had only been approved through January 1, 2013, the employer asked for medical documentation to support the need to be off work through January 6, 2013. Because Ms. Landis' leave of absence had been based in part on her chronic back issues, the employer asked for a medical release allowing her to return to the employment. Ms. Landis had used the time away from work beyond January 1, 2013 to provide care to her mother as her mother recovered from her heart procedure. By the second week of January, Ms. Landis' mother was receiving care from a nurse, which freed Ms. Landis to return to work.

It was January 24, 2013 before Ms. Landis provided the employer with medical documentation to support her need for time off for January 1-6, 2013 and a medical release allowing her to return to work. On January 22, the employer had sent Ms. Landis a letter reminding her that she had been on an unapproved leave of absence since January 1, 2013.

On January 26, 2013, Ms. Landis accepted a demotion to the position as a part-time cashier. The new position paid less, \$12.06 per hour. Pursuant to the employer's standard operation procedures, the employer had gone through the process of locating an open part-time position, having the hire approved by district level personnel, and offering Ms. Landis the position. On February 1, 2013, Ms. Landis signed a work availability statement that indicated she wanted from 16 to 20 hours per week and to work from four to nine hours per shift. The availability statement Ms. Landis signed on February 1 indicated that she was not available to work on Sundays, that she was available to work from 5:00 a.m. to 6:00 p.m. on Monday through Friday, and that she was available to work all day on Saturdays.

The employer makes its schedules three weeks in advance. Because the schedule for the period ending February 4, 2013 had already been prepared and posted at the time Ms. Landis accepted her new position, and because the new schedule would start on February 5, 2013, the employer designated February 5, 2013 as Ms. Landis' first day back at work in the part-time cashiering position.

On February 28, 2013, Ms. Landis signed a new availability form that indicated she was available to work up to 30 hours per week. At that time, the employer had schedules finalized for the period ending March 30, 2013. Thus, Ms. Landis' new availability would go into effect on the work schedule on March 31, 2013.

From February 5, 2013 onward, Ms. Landis worked the hours the employer had for her within the restrictions she had made to her availability.

Ms. Landis established a claim for unemployment insurance benefits that was effective January 6, 2013. Ms. Landis' base period for purposes of that claim consisted of the fourth quarter of 2011 and the first, second, and third quarter of 2012. Ms. Landis' base period wage

credits are based on a history of full-time, not part-time, employment. Workforce Development set Ms. Landis' weekly benefit amount at \$350.00. Ms. Landis received unemployment insurance benefits of \$2,710.00 for the period of January 6, 2013 through March 16, 2013.

### **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.

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 that Ms. Landis voluntarily quit her full-time position effective December 19, 2012, due to dissatisfaction with the full-time hours and the duties associated with the position. Ms. Landis' voluntary separation from her full-time position was without good cause attributable to the employer. The voluntary separation from the full-time position disqualified Ms. Landis for unemployment insurance benefits until she had worked in and been paid wages for insured work equal to 10 times her weekly unemployment insurance benefit amount. Ms. Landis would also have to meet all other eligibility requirements. In addition, the voluntary separation from the full-time position without good cause attributable to the employer would relieve the employer of liability for benefits in connection with the January 6, 2013 claim for benefits.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Ms. Landis' base period wage credits were based on a base period history of full-time employment. Effective December 19, 2012, Ms. Landis voluntarily reduced her work availability so that she was no longer available for full-time employment. Ms. Landis was available only for part-time work during the entire period her claim for benefits was active. This voluntary restriction in availability relative to the full-time availability during the base period prevents Ms. Landis from meeting the availability requirement and further prevents Ms. Landis from being eligible for unemployment insurance benefits during the period her claim was pending. In addition, the evidence establishes that Ms. Landis was on a leave of absence from December 19, 2012 until January 24, 2013 when she finally provided the employer with appropriate materials that would allow her and the employer to proceed with placing her in a new part-time position. The leave of absence was a period of voluntary unemployment during which Ms. Landis did not meet the work availability requirement and was not eligible for benefits. See 871 IAC 24.23(10).

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits

were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because Ms. Landis was not eligible for the benefits she received for the period of January 6, 2013 through March 16, 2013, the \$2,710.00 in benefits she received for that period is an overpayment of benefits. The evidence provides two bases for disqualifying Ms. Landis for unemployment insurance benefits: the separation from the full-time employment and the failure to meet the availability requirement. Based on the availability disqualification, the administrative law judge concludes that Ms. Landis is required by law to repay the benefits she received. The administrative law judge will remand to the Claims Division the determination of whether Ms. Landis is also required to repay the benefits as result of the disqualifying *separation* from her full-time position.

**DECISION:**

The Agency representatives February 18, 2013, reference 02, decision is reversed. The claimant voluntarily quit her full-time position without good cause attributable to the employer effective December 19, 2012. Based on the voluntary separation from the full-time position, 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 in connection with the January 6, 2013 claim. The claimant did not meet the availability requirement during the period of January 6, 2013 through March 16, 2013 and is ineligible for benefits for that period. The claimant is over paid \$2,710.00 for the period of January 6, 2013 through March 16, 2013. Based on the availability disqualification, the claimant must repay those benefits. This matter is remanded to the Claims Division the determination of whether the claimant is also required to repay the benefits as result of the disqualifying *separation* from her full-time position.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs