

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA APPEGATE
Claimant

APPEAL NO. 09A-UI-11877-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 06/14/09
Claimant: Respondent (2-R)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 4, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 2, 2009. Claimant Rebecca Applegate participated. Joyce Gitch, Market Manager for Northeast Iowa, represented the employer and presented additional testimony through Jacob Brown, Co-Manager. Exhibits One and Five through Eleven were received into evidence.

ISSUE:

Whether Ms. Applegate's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rebecca Applegate was employed by Wal-Mart as a full-time assistant manager at the employer's Blairs Ferry Road location in Cedar Rapids. Ms. Applegate started the employment in February 2008 and last performed work for the employer on March 26, 2009. Ms. Applegate was on an approved leave of absence under the Family and Medical Leave Act from March 26, 2009 through June 11, 2009. The FMLA leave was based on Ms. Applegate's kidney and back issues.

Ms. Applegate was released by her doctor to return to work without restrictions on June 12, 2009. But, Ms. Applegate did not want to return to work at the Blairs Ferry Road location, because she lacked appropriate child care and because she was involved in a child custody dispute and wanted to relocate to a position away from the child's/children's father.

While Ms. Applegate was on FMLA leave, she had spoken with Joyce Gitch, Market Manager for Northeast Iowa, about her desire to transfer to a different position. The employer's policy would not allow a transfer to occur while an employee was on FMLA leave. Ms. Gitch encouraged Ms. Applegate to return to her position at the Blairs Ferry Road location and to pursue a transfer once she was again an active-status employee.

Ms. Applegate was scheduled to return to work on June 13. On that day, Ms. Applegate notified Co-Manager Jacob Brown that she was commencing a personal leave effective immediately. Ms. Applegate wanted to go on the personal leave while she looked for a new position to transfer to. Ms. Applegate was interested in locating a position somewhere else in Iowa or in Oklahoma. Ms. Gitch had earlier advised Ms. Applegate that if she commenced a personal leave for that purpose, she would forfeit her position at the Blairs Ferry Road location. Ms. Gitch had also advised Ms. Applegate that the chances of locating another assistant manager position to transfer to were slim. The employer had recently changed its business model and had decided not to hire additional assistant managers for its stores. Ms. Applegate had been interested in locating a position somewhere else in Iowa.

Though Ms. Applegate continued to participate in physical therapy for her back, this would not prevent her from returning to the employment or performing her regular duties. Ms. Applegate had not inquired about time away from work so that she could attend physical therapy appointments and the employer had not refused to give her time away from work for that purpose.

On July 14, Ms. Applegate asked whether it would be possible to return to her position at Blairs Ferry Road. The employer advised Ms. Applegate that it no longer had a position available for her.

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 indicates that Ms. Applegate's voluntary separation from the employment had nothing to do with any medical or health issue. Ms. Applegate had not inquired about time away from work so that she could attend physical therapy appointments and the employer had not refused to give her time away from work for that purpose. The evidence indicates that Ms. Applegate voluntarily separated from the employment on June 13, 2009 for personal reasons and not for good cause attributable to the employment. Ms. Applegate wanted a different work schedule due to her childcare needs. Ms. Applegate wanted a transfer away from her estranged significant other. The employer continued to have the same employment available to Ms. Applegate, but Ms. Applegate initiated a separation from the employment on June 13. The weight of the evidence indicates that Ms. Applegate initiated the separation with full awareness that she would be forfeiting her position.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Applegate voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Applegate 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 Ms. Applegate.

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 4, 2009, 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