

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHARLES D MCABEE**  
Claimant

**APPEAL 22A-UI-02933-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART ASSOCIATES**  
Employer

**OC: 12/12/21  
Claimant: Respondent (2)**

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Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview  
Iowa Admin. Code r. 871-24.25(4) - Absent Three Days with no Notice

**STATEMENT OF THE CASE:**

The employer/appellant, Wal-Mart Associates, appealed the January 5, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon finding the record for the December 13, 2021, dismissal from work for excessive absences were due to illness and were properly reported and as such, there was no misconduct. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for February 28, 2022. Claimant, Charles McAbee, did not participated. The employer participated through Robert Ruddelo, auto care center manager. Employer's Exhibits 1-5 were admitted. Judicial notice was taken of the administrative file.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?  
Was the claimant overpaid benefits?  
Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed with employer as a fulltime service technician, with a varied work schedule. His first day of work was April 25, 2020, and his last day worked was November 29, 2021. Employer has an employee handbook. Claimant was provided with one when he started work. Covered in the handbook are no call no shows, with three consecutive ones being considered job abandonment. Claimant was scheduled to work on December 3, 4, 5, 6, and 7 2021. Claimant failed to call to work that he would be absent, and he failed to report to work.

Employer considered claimant to have abandoned his job (voluntarily quit) on December 7, 2021, with the paperwork processed effective December 9, 2021.

Records show claimant has received \$2,486.00 in benefits on this claim, for the benefit weeks 12/18/21 through 01/29/22 with his weekly benefit amount being \$366.00. Employer submitted some response/documents for fact finding. Upon review of Employer's response, per the definitions, employer did participate in fact finding. See Iowa Admin. Code r. 871-24.10(1).

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit by failing to show up for work and failing to give notice to the employer for three days.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer has presented substantial and credible evidence through testimony and exhibits, that claimant no call/no showed for five consecutive days, thereby voluntarily quitting. Benefits are denied.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 96.3(7)a-b, 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)(a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or

adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871-subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the

contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, any benefits paid on the claim would be benefits to which he was not entitled. The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Claimant received \$2,486.00 in benefits on this claim. Employer participated in factfinding.

The law also states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. . ." Iowa Code § 96.3(7)(b)(1)(a). Here, the employer did respond adequately and thus participated per the definition.

Since employer did participate in fact finding, claimant does have to repay the \$2,486.00 in benefits received and the employer's account is not to be charged.

**DECISION:**

The January 5, 2022, (reference 01) unemployment insurance decision is **REVERSED**. Claimant was a voluntarily quit as of December 7, 2021. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant was overpaid unemployment insurance benefits in the amount of \$2,486.00 that shall be repaid, but not charged to the employer's account.



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Darrin T. Hamilton  
Administrative Law Judge

March 15, 2022  
Decision Dated and Mailed

dh/kmj