

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CASSANDRA L WURSTER  
PO BOX 194  
SABULA IA 52070-0194

WAL-MART STORES INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06O-UI-07483-JTT  
OC: 04/23/06 R: 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-Time Employment  
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Wal-Mart filed a timely appeal from the May 11, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 10, 2006. Store Manager Chris Moran represented the employer. Claimant Cassandra Wurster participated. Employer's Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cassandra Wurster was employed by Wal-Mart as a part-time photo lab specialist from

September 24, 2004 until March 10, 2006, when she voluntarily quit. Ms. Moran had consistently worked 32 hours per week during the last eight months of her employment. Ms. Wurster was also a full-time student and the employer had complied with her request to have Tuesdays and Thursdays off for school. One month prior to resigning, Ms. Wurster had asked to have her work hours reduced due to an increased college course load. Ms. Wurster's need to reduce her hours became a more critical concern to Ms. Wurster when she learned that she needed to complete a school internship. When the employer did not decrease Ms. Wurster's hours, Ms. Wurster advised the photo lab manager that she wanted to quit. The manager asked Ms. Wurster if she wanted to provide a notice period or be done immediately. The manager and Ms. Wurster agreed that Ms. Wurster's quit would be effective immediately.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Wurster's voluntary quit was for good cause attributable to the employer. It does not.

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.

Where an employee quits employment to attend school, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(26).

The evidence in the record establishes that Ms. Wurster had compelling personal reasons for wanting her hours reduced and for quitting the employment. Ms. Wurster's priority was furthering her education and Ms. Wurster quit so that she could better handle her increased course load and participate in an internship. However, these reasons for quitting the employment did not constitute good cause attributable to the employer. Accordingly, the quit was a disqualifying event and Ms. Wurster is disqualified for *full* 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. Wal-Mart's account shall not be charged for benefits paid to Ms. Wurster.

An individual who voluntarily quits *part-time* employment without good cause attributable to the employer and who has not requalified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27. The evidence in the record establishes that all of Ms. Wurster's base period wage credits are based on the employment with Wal-Mart. Accordingly, Ms. Wurster would not be eligible for reduced benefits prior to requalifying for full-benefits by earning ten times her weekly benefit amount since leaving the employment with Wal-Mart.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because Ms. Wurster has received benefits for which she has been deemed ineligible, those benefits represent an overpayment that Ms. Wurster must repay to Iowa Workforce Development. Ms. Wurster is overpaid \$2,030.00.

**DECISION:**

The Agency representative's May 11, 2006, reference 01, decision is reversed. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a 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. The claimant is overpaid \$2,030.00.

jt/cs