

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIANNE COLLUM
Claimant

APPEAL NO: 06A-UI-08890-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/09/06 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's August 23, 2006 decision (reference 01) that concluded Marianne Collum (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 3, 2006. The claimant participated personally. The employer participated by Thomas Wagner, Assistant Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 22, 2005, as a full-time department manager earning \$7.90 per hour. The claimant worked from 6:00 a.m. to 3:00 p.m.

On June 1, 2006, the claimant walked off the job. On or about June 4, 2006, the employer reinstated the claimant. As a condition of her reinstatement, the claimant became a full-time sales associate working for \$7.10 less per hour. The claimant completed an availability statement in which she indicated she could work any hours the employer scheduled.

On July 20, 2006, the claimant was frustrated because her hours were going to change to 11:00 a.m. to 8:00 p.m. She complained to the assistant manager and told him she was giving her two-week notice. The claimant did not appear for work after July 20, 2006. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

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.

871 IAC 24.25(18) 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:

- (18) The claimant left because of a dislike of the shift worked.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving and quit work. When an employee quits work because she dislikes the shift she works, her leaving is without good cause attributable to the employer. The claimant left work because she did not like the shift she was going to work. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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.

The claimant has received benefits in the amount of \$3,183.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 23, 2006 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,183.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs