

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDY L FRIEDEN**

Claimant

**APPEAL NO. 06A-UI-04780-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 04/08/07 R: 03  
Claimant: Respondent (2)**

Iowa Code section 96.5(1) – Voluntary Quit  
Iowa Code section 96.3(7) – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Wal-Mart Stores filed a timely appeal from the April 30, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 29, 2007. Claimant Judy Frieden participated. Assistant Manager Jamie Cumberworth represented the employer and presented additional testimony through Assistant Manager Maranda Schmidt. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Employer's Exhibits One, Two and Three into evidence.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.  
Whether the claimant quit in response to intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment.  
Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Judy Frieden was employed by Wal-Mart Stores as a full-time cashier at the Coralville Wal-Mart from August 18, 2006 until March 28, 2007, when she voluntarily quit. The employer hired Ms. Frieden as a "temporary" employee. The employer used an established "new hire" pay matrix to determine Ms. Frieden's starting wage based on her employment history and set that wage at \$7.40 per hour. On August 18, 2006, Ms. Frieden signed her agreement to the starting wage and the employer's calculation of the starting wage pursuant to the "new hire rate worksheet." Ms. Frieden had completed a computer-based application and employment acceptance process, which included Ms. Frieden acknowledging her "temporary" employee status in one of several computer screens. Under the employer's policies, the store management has 120 days from the hire date of a "temporary" employee to terminate the employment or to grant the employee "permanent" employee status. The employer does not make profit sharing benefits available to "temporary" employees. The employer does not make full health insurance benefits available to "temporary" employees, but does make a less attractive policy available.

Ms. Frieden did not understand that she was a “temporary” employee until December 2006, when she raised a concern about her lack of health insurance benefits to the store’s personnel manager. The employer “rehired” Ms. Frieden and made Ms. Frieden a “permanent” employee effective December 8, 2006. Pursuant to the employer’s policies, Ms. Frieden was to be evaluated for a raise within 90 days of becoming a “permanent” employee. Ms. Frieden was also subject to a waiting period after she received “permanent” employee status before she was eligible for the employer’s better health insurance policy.

On October 28, 2006, Assistant Manager Amanda Schmidt transferred to the Coralville Wal-Mart and became Ms. Frieden’s supervisor. On January 26, 2007, Ms. Frieden met with Ms. Schmidt for her first evaluation as a “permanent” employee. At that time, Ms. Frieden expressed concern that she was not earning what she believed she deserved and had not been given full credit for her prior experience under the employer’s new hire pay matrix. Ms. Frieden also raised concern that she had been employed at the store for five months and still did not qualify for the employer’s better health insurance benefits. The employer was not willing to reevaluate Ms. Frieden’s “new hire” wage and was not willing to deviate from its waiting period for the better health insurance policy made available only to “permanent” employees. Ms. Frieden received a 40-cent raise in connection with the evaluation, which took her pay to \$7.80 per hour. After the evaluation, Ms. Frieden continued to be dissatisfied with her wage and her health insurance status, but continued in the employment.

During February 2007, the employer disbursed profit sharing benefits to the store’s employees. A week later, Ms. Frieden became aware that other employees, who had started at the store at the same time she did, had received significantly more in profit sharing benefits. The employer made profit sharing benefits available only to “permanent” employees and based the amount of the benefits on the average number of hours the employee worked. The other employees who had received more in profit sharing benefits than Ms. Frieden had either been hired as “permanent” employees or had received their “permanent” employee status before Ms. Frieden received hers. Though Ms. Frieden was unhappy with the difference in profit sharing benefits, Ms. Frieden continued in the employment.

On March 4, 2007, Assistant Manager Jamie Cumberworth transferred to the Coralville store and became Ms. Frieden’s supervisor. In the middle of March, Ms. Frieden became aware that one or more of the new cashiers she was training was being paid a higher wage than she was making. This news added to Ms. Frieden’s dissatisfaction with the conditions of her employment.

On March 28, 2007, the personnel manager summoned Ms. Frieden to her office to discuss Ms. Frieden’s recent absence. Ms. Frieden took the opportunity to raise concerns about her pay and her health benefits. The personnel manager expressed that she, too, had been subject to the same policies. Ms. Frieden then expressed her concerns to other managers on duty, who indicated they did not fully understand the difference in Ms. Frieden’s pay. Ms. Frieden returned to the personnel manager and asked for a raise. The request was denied. Ms. Frieden then proceeded to walk out of the store. A manager intercepted Ms. Frieden and told Ms. Frieden that the employer did not want to lose her. Ms. Frieden said that if she did not get a raise she was quitting. Ms. Frieden then walked out.

Ms. Frieden established a claim for benefits that was effective April 8, 2007 and has received benefits totaling \$1,246.00.

## 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, where an employee quits due to dissatisfaction with the wage, but knew the rate of pay at the time of hire, the employee is presumed to have quit without good cause attributable to the employer. See 871 IAC 24.25(13).

The greater weight of the evidence indicates that Ms. Frieden's quit was not for good cause attributable to the employer. The greater weight of the evidence fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment. The evidence indicates that Ms. Frieden's quit was prompted, primarily, by dissatisfaction with her wages. However, the evidence indicates that Ms. Frieden knew and agreed to the starting wage of \$7.40 per hour at the time of hire. The evidence indicates that Ms. Frieden received a raise within a few months of beginning the employment. The fact that another employee qualified for a higher wage under the employer's "new hire" pay matrix did not suddenly make the wage Ms. Frieden had agreed to an intolerable working condition. The greater weight of the evidence indicates that Ms. Frieden's lack of understanding regarding her "temporary" employee status at the start of the employment was attributed to Ms. Frieden's unique limitations and not attributable to any intolerable or detrimental working condition imposed by the employer. The same goes for the employer's health insurance policy. The evidence fails to establish that the employer in any manner singled Ms. Frieden out for disparate treatment and the evidence in fact does not establish any disparate treatment.

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

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. Frieden has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Frieden must repay to Iowa Workforce Development. Ms. Frieden is overpaid \$1,246.00.

**DECISION:**

The Agency representative's April 30, 2007, 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. The claimant is overpaid \$1,246.00.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs