

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

CANDACE K GODBERSEN
2409 VIRGINIA ST
SIOUX CITY IA 51104

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

Appeal Number: 05A-UI-01754-RT
OC: 01-23-05 R: 01
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated February 10, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Candace K. Godbersen. After due notice was issued, a telephone hearing was held on March 7, 2005, with the claimant participating. Scott Caldwell, Co-Manager of the employer's store in Sioux City, Iowa, where the claimant was employed, and Audra Klein, Customer Service Manager, participated in the hearing for the employer. Pat Thomas, Personnel Manager, was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. Employer's Exhibit One was admitted

into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time cashier from July 8, 2003 until she voluntarily quit on January 21 or 22, 2005. On one of those two days, the claimant walked off the job before the end of her shift. She did so because she was told to go to the back to speak to management. Management at that time wanted to speak to the claimant about her move to the Deli department. Earlier in the week, an assistant manager had spoken to the claimant about moving to the Deli department and the claimant was in agreement and willing to move. However, the claimant believed that she was to be admonished or reprimanded again for talking to co-workers and she simply stated to Audra Klein, Customer Service Manager and one of the employer's witnesses, that she was sick of what was going on and walked off the job and left. The claimant has not returned to the employer and offered to go back to work.

When the claimant first arrived at work on January 21 or 22, 2005, the claimant was admonished by Scott Caldwell, Co-Manager and the employer's witness, about talking in the break room about him and another co-worker. Mr. Caldwell told the claimant to stop doing so. The claimant characterized this as harassment but was unable to specifically describe how it was harassing except to say that Mr. Caldwell talked down to her and told her to stop talking about that matter. She had had no other problems with Mr. Caldwell. After this discussion with Mr. Caldwell, the claimant went to work. Later, the claimant was overheard by Ms. Klein talking to another associate about the same matter. Ms. Klein asked Mr. Caldwell how to handle it. He told her to speak with the claimant. She spoke with the claimant and told the claimant that she needed to stop spreading rumors because it could lead to insubordination. The claimant remarked that she had already been spoken to about it and continued to work. At no time did either Mr. Caldwell or Ms. Klein tell the claimant that she was fired or discharged nor did they ever tell her that she was laid off for a lack of work. The claimant had never expressed any concerns to anyone at the employer about her working conditions except maybe on the day in question to another customer service manager but had never indicated or announced any intention to quit over these matters. Work remained available for the claimant had she not walked off the job, either continuing as a cashier or in the Deli department. Pursuant to her claim for unemployment insurance benefits filed effective January 23, 2005, the claimant has received unemployment insurance benefits in the amount of \$974.00 as follows: \$154.00 for benefit week ending January 29, 2005 (\$40.00 vacation pay); \$194.00 for benefit week ending February 5, 2005; \$44.00 for benefit week ending February 12, 2005 (\$150.00 vacation pay) and \$194.00 per week for three weeks, from benefit week ending February 19, 2005 to benefit week ending March 5, 2005. The claimant has been approved for department or director approved training from January 29, 2005 to May 14, 2005 and is appropriately attending such training.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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(1) provides:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

871 IAC 24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

871 IAC 24.25(28) 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:

(28) The claimant left after being reprimanded.

871 IAC 24.26(2)(3)(4) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

The parties agree and the administrative law judge concludes, that the claimant left her employment voluntarily on January 21 or 22, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she left her employment because she was admonished by the Co-Manager, Scott Caldwell, on January 21 or 22, 2005, the same day she quit by walking off the job. The claimant testified that she believed this was "harassment" but was unable to state exactly how it was harassment. The claimant testified that Mr. Caldwell "harassed" her by the manner in which he spoke to her but again she could not characterize that except to say that he spoke down to her and that he told her to stop spreading rumors about him and a co-worker. The claimant conceded that she had never had a problem with Mr. Caldwell before. The claimant later in the day was overheard talking with another co-worker about the same incident and was again admonished by Customer Service Manager, Audra Klein, one of the employer's witnesses. Finally, the claimant was called to the back to see management and that is when the claimant walked off the job because of this alleged "harassment." The claimant was called to the back to speak to management about a move to the Deli department, which had been in the works for several days. The claimant had been asked to move to the Deli department by the Deli department assistant manager and the claimant had consented and agreed and was willing to make such a move. On the evidence here, the administrative law judge must conclude that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that her reprimands or discussions with Mr. Caldwell and Ms. Klein made her working conditions unsafe, unlawful, intolerable or detrimental. Apparently this was the only incident that claimant had with Mr. Caldwell and all he was doing was reprimanding her for talking about him and another worker. The claimant was reprimanded a second time and then chose to leave. The administrative law judge concludes that the claimant actually left her employment because she had a personality conflict with her supervisor and because she had been reprimanded on two occasions. However, these reasons are not good cause attributable to the employer. As noted above, there is insufficient evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental and there is no evidence that she was subjected to a substantial change in her contract of hire. The claimant really never expressed any concerns to the employer about her working conditions until at least the day in question when she may have spoken to another customer service manager but the claimant never indicated or announced any intention to quit prior to walking off the job. The claimant gave the employer no reasonable opportunity to address any of her concerns before she quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$974.00 since separating from her employer on or about January 21 or 22, 2005 and filing for such benefits effective January 23, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 10, 2005, reference 02, is reversed. The claimant, Candace K. Godbersen, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. The claimant is overpaid unemployment insurance benefits in the amount of \$974.00.

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