

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOANNE L DANIELS
Claimant

APPEAL NO. 08A-UI-08821-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/17/08 R: 02
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated September 22, 2008, reference 01. The decision allowed benefits to the claimant, Joanne Daniels. After due notice was issued a hearing was held by telephone conference call on October 17, 2008. The claimant participated on her own behalf. The employer participated by Store Manager Andy Fosselman, Co-Manager Steve Morgan and was represented by Heidi Guttau-Fox. Exhibits One, Two, Three, Four, Five, and Six, were admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Joanne Daniels was employed by Wal-Mart from March 2005 until August 26, 2008 as a full-time sales associate. She had been promoted to department manager in March 2008 but demoted back to sales associate July 18, 2008, due to poor work performance. She agreed to accept the demotion and signed a new “availability statement” indicating she was willing and able to work all shifts on all days of the week.

Ms. Daniels had been scheduled 1:00 p.m. to 10:00 p.m. beginning August 16, 2008, but she appeared for work at 7:00 a.m. which had been her prior schedule. The time keeping system would not allow her to punch in so many hours earlier than her scheduled start time so for August 16 and 17, 2008, she requested a co-manager, Ryan, to override the system and clock her in. She was not scheduled August 18 or 19, 2008, and during this time Co-Manager Steve Morgan became aware of what she had been doing. He instructed Ryan not to allow her to punch in at 7:00 a.m. for a 1:00 p.m. shift so when Ms. Daniels appeared on August 20, 2008, at 7:00 a.m., he told her she should come back at 1:00 p.m. as scheduled. She did not return and was no-call/no-show to work August 20 through 26, 2008. She was considered a voluntary quit for being no-call/no-show for more than three days as provided in the employee handbook.

Ms. Daniels did not attempt to come back in at 1:00 p.m. on August 20, 2008, she did not attempt to contact the personnel department, the store director or any of the co-managers to

discuss her situation. The schedule for those hours had been posted three weeks in advance and prior to August 16, 2008, she made no attempt to discuss her concerns with management. She would only work 7:00 a.m. to 4:00 p.m. Tuesday through Saturday, but had signed the availability statement indicating she was available on all days for all shifts.

Joanne Daniels has received unemployment benefits since filing a claim with an effective date of August 17, 2008.

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.

871 IAC 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 claimant maintains she was discharged by Ryan when he did not override the time keeping system to allow her to punch in six hours early. There is nothing in the record to support this. The claimant was scheduled to work every day from August 20 through 26, 2008, and did not appear for work. Her contention she believes she was fired is not credible because she knew an exit interview would be required for a discharge and other formalities observed, which did not happen on the morning of August 20, 2008.

Her name remained on the schedule which, if she had been fired, would not have occurred. Her name would have been removed and other personnel substituted for those hours. She had not discussed her schedule with any member of management prior to August 16, 2008, but still refused to work her hours as scheduled. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7, 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) 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. 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. The employer shall not be charged with the benefits.

(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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 22, 2008, reference 01, is reversed. Joanne Daniels is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs