

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

APRIL L MYERS
215 AVE O APT 3D
FT DODGE IA 50501

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

Appeal Number: 05A-UI-02025-H2T
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 Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 18, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 29, 2005. The claimant did participate. The employer did participate through (representative) Amy Jo Watsek, Co-Manager and Jeff Nelson, First In Line Associate. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a sales associate part time beginning April 27, 2004 through October 9, 2004 when she voluntarily quit. The claimant was unhappy that the employer was

requiring her to wear her nametag facing forward. The nametag contained only the claimant's first name. When the claimant was hired she was given the employer's dress code policy and knew that wearing a nametag with her first name on it was a part of the required uniform. On October 9, assistant manager Nick told the claimant to turn her nametag around so that her name could be seen. The claimant refused because she believed one of the male customers who came into the store on occasion was stalking her. This customer had spoken to the claimant and told her she looked beautiful and asked her to come over to his house. The claimant refused his advances. When this conversation took place the claimant was wearing her nametag facing forward. The claimant complained to Nick about what the customer had said to her. She alleges that this customer followed her home one evening. She did not report his actions to the police. When the claimant was told that she would be required to wear her nametag facing forward, she quit rather than comply with the policy. Continued work was available for her had she not quit.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment 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(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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998). The claimant's decision to quit after having been reprimanded was not a good-cause reason attributable to the employer for leaving. The claimant knew when she was hired that she would be required to wear a name tag with her first name on it as part of the store uniform. The nametag did not provide any other information about her other than her first name. The employer was not obligated to allow the claimant not to wear her nametag because she did not feel safe. If the claimant truly did not feel safe, then she would have called the police after the stalker allegedly

followed her home. The nametag reveals minimal information about the claimant. It was reasonable for the employer to require her to wear the nametag. The employer requires nametags as part of their uniform policy and to aid customers in customer service. Her refusal to follow the policy is not good cause attributable to the employer for quitting. 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 18, 2005, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant is overpaid benefits in the amount of \$2,600.80.

tkh/tjc