

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M GALLAGHER
Claimant

APPEAL NO: 13A-UI-10863-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/25/13

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's September 16, 2013 decision (reference 01) that concluded Jennifer M. Gallagher (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 21, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Chrissy Barnes appeared on the employer's behalf and presented testimony from one other witness, Judy Hildebrand. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 15, 2012. She worked part time (25 – 30 hours per week) as a cashier at the employer's Manchester, Iowa store. Her last day of work was May 15, 2013.

The claimant started a leave of absence due to pregnancy and mental health issues as of May 16, 2013. She had been certified by her doctor to remain off work until August 15, 2013. While she had not yet given birth (as of the date of the hearing the employer was aware that she was still pregnant), on August 13 the claimant came into the store and informed the employer that due to her health issues she was not going to return from the leave of absence, but was turning in her resignation. The employer considers the claimant eligible for rehire should she be able to return to work in the future.

The claimant established a claim for unemployment insurance benefits effective August 25, 2013. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. *Id.*

Here, the claimant failed to return at the end of the leave of absence. Rather, she affirmatively voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She did not provide any medical evidence that her doctor was requiring her to quit or advising her to quit. The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

In this case it does not appear that the employer participated directly in the initial fact-finding proceeding, but only submitted written materials for consideration. The rule which implements the statute does consider submission of written materials to be "participation" under some circumstances. However, there was not an preliminary determination by the Claims representative whether the documentation which was submitted did or did not met the criteria for "participation," and those written materials were not distributed prior to the hearing in this case so that the administrative law judge could properly make that determination in this proceeding. Therefore, the matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The representative's September 16, 2013 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of August 13, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css