

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J PADILLA
Claimant

APPEAL NO. 10A-UI-10169-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/13/10
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated July 6, 2010, reference 01. The decision allowed benefits to the claimant, Daniel Padilla. After due notice was issued, a hearing was held by telephone conference call on September 3, 2010. The claimant participated on his own behalf. The employer participated by Assistant Manager Kimberly Kelly.

ISSUE:

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

FINDINGS OF FACT:

Daniel Padilla was employed by Wal-Mart from December 20, 2008 until June 7, 2010 as a full-time service technician. He received the employer's policies and procedures at the time of hire. Under the attendance policy, employees are notified that three days of no-call/no-show to work is considered a voluntary quit.

On June 1, 2010, the claimant walked off the job without punching out. He was no-call/no-show to work June 2, 3, and 4, 2010. The employer processed him as a voluntary quit under the no-call/no-show rule.

Mr. Padilla maintains he was discharged by the shop manager, Kindro, when he was told to "go home for lunch and don't come back." But Kindro does not have the authority to hire or fire employees. Any discharge must first be investigated by higher management and a member of management must be present when a discharge occurs.

Daniel Padilla has received unemployment benefits since filing a claim with an effective date of June 13, 2010.

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 is a voluntary quit by operation of law under the provisions of the above Administrative Code section. He thought he was discharged, but that is not the case. The shop manager does not have the authority to discharge a technician. The claimant made no attempt to contact higher management or the human resources department to protest what he thought was a discharge.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. IDJS*, (Unpublished, Iowa App. 1984). The administrative law judge finds the reasoning in that case to be persuasive.

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 he 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 July 6, 2010, reference 01, is reversed. Daniel Padilla is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he 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/kjw