

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN NEE

Claimant

APPEAL NO: 08A-UI-01296-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 01/06/08 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated January 28, 2008, reference 01, which held that Martin Nee (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2008. The claimant participated in the hearing. The employer participated through Josh Bonney, Co-Manager, Aduette Awad, Assistant Manager; and Attorney Kelli Lieurance. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the part, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time sporting goods sales associate from April 26, 2007 through January 6, 2008 when he walked off the job. Assistant Manager Aduette Awad instructed the claimant to zone in department three which is the cosmetics department. Zoning involves working on the shelves and moving the products to the front of the shelves and so forth. Ms. Awad realized later that day that the claimant had not done as she had directed. She went to him and directed him again but he refused stating that it was not in his job description. The claimant then said, "why don't you do something for once." Ms. Awad took the claimant to the office to speak to the co-manager. The claimant argued and told Ms. Awad that she needed to respect her elders. Co-Manager Josh Bonney told the claimant that since Ms. Awad was the supervisor, the claimant needed to show her respect. The employer prepared a disciplinary warning to give to the claimant but he said he was leaving. He was advised if he left, his employment would end due to job abandonment. The claimant left in

spite of the warning but threw down his identification tag and gave the employer his discount card.

He went to speak to his wife in the deli department. Ms. Awad followed him and told him his wife was still an employee and needed to work. The claimant said he was his wife's ride and Ms. Awad stated that she was not off work unless she intended to walk off the job with him. The claimant told Ms. Awad she was the laziest assistant manager there was and told his wife he would be back to get her. He left the store at that point.

The claimant filed a claim for unemployment insurance benefits effective January 6, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by walking off the job on January 6, 2008 even after the employer advised him it would end his employment. The claimant now contends he told the employer that he had to go home that day due to a sore knee but both employer witnesses state this was never mentioned at the time. The employer witnesses stated that they would have never had the claimant stay at work if he claimed illness was the reason he wanted to leave. The administrative law judge finds it very unlikely that the employer would have denied an employee's request to go home due to illness and doubts that an employee would be threatened if he made it clear that was why he wanted to leave. It is more probable than not that the claimant walked off the job after being reprimanded and merely used a medical excuse afterwards in an attempt to obtain unemployment insurance benefits. Additionally, his admissions of disrespectful statements he made to Ms. Awad on that date further demonstrate anger was driving his actions that day instead of complaints of pain.

The law presumes it is a quit without good cause attributable to the employer when an employee leaves after being reprimanded. 871 IAC 24.25(28). It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code § 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 unemployment insurance decision dated January 28, 2008, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,194.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs