

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARNA JUSTMAN**

Claimant

**APPEAL NO. 07A-UI-09971-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 09/30/07 R: 02  
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit  
871 IAC 24.25(4) - Voluntary Quit Without Good Cause  
Section 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated October 17, 2007, reference 01, which held that Marna Justman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on December 4, 2007. The claimant participated in the hearing. The employer participated through Timothy Morrow, Assistant Manager. Based on the evidence, the arguments of the parties, 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 her to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time department manager from August 13, 2004 through September 27, 2006. The employer's attendance policy provides that an employee is considered to have voluntarily terminated her position due to job abandonment if she is a no-call/no-show for three consecutive workdays. The claimant was a no-call/no-show for four consecutive days ending on September 26, 2007, and she was considered to have voluntarily quit her employment.

The claimant was upset because the employer was going to change her schedule, so she decided not to report to work for four days ending September 26, 2007. She did call her manager on September 24, and 25, 2007, but the calls were late, so they were still considered no-call/no-shows. The claimant called her manager during the evening on September 26, 2007 and asked if she should bother returning to work but was advised it was too late.

The claimant filed a claim for unemployment insurance benefits effective September 30, 2007 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. 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 her intent to quit and acted to carry it out by failing to call the employer prior to her scheduled shift and failing to report to work for four consecutive days ending September 26, 2007.

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 was deemed a voluntary quit on September 27, 2007 after four days of no-call/no-show. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She admitted she was a no-call/no-show for four consecutive days. Benefits are therefore 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 unemployment insurance decision dated October 17, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has 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 \$726.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw