

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NIKOLE L JENSEN

Claimant

APPEAL NO. 11A-UI-01720-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 12/26/10

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 31, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 14, 2011. Employer participated by Cindy Fangman, Assistant Manager, and Stacy Stabnow, Human Resources Manager. Although the claimant provided a telephone number at which she could be reached, the claimant did not answer when that number was dialed. A detailed message was left for the claimant on how to participate in the hearing. The claimant did not call during the hearing and did not participate in the hearing. The record consists of the testimony of Cindy Fangman; the testimony of Stacy Stabnow; and Employer's Exhibits 1-5.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time associate in the jewelry department of the employer's store located in western Cedar Rapids, Iowa. The claimant began her employment on July 6, 2004. Her last day of work was July 6, 2010. She was separated from her employment on October 30, 2010.

The claimant requested a leave of absence for medical reasons from July 8, 2010 to July 22, 2010. The claimant was provided the necessary leave of absence papers, along with a report that needed to be prepared by her physician. The claimant never provided the medical information despite numerous requests from Stacy Stabnow, the human resources director. Ms. Stabnow called the claimant on several occasions and would not receive a call back until a

week later. The claimant told Ms. Stabnow that she would provide the information but she never did.

On October 31, 2010, Ms. Stabnow sent the claimant a certified letter, return receipt requested, in which she again asked for the requested information to document the leave of absence. The claimant signed for the letter on October 18, 2010. The claimant still did not provide the information. The claimant was considered a voluntary quit and was terminated on October 30, 2010. Approximately one week later the claimant did call Ms. Stabnow. She told Ms. Stabnow that she had quit her job.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence is uncontroverted that it was the claimant who initiated the separation of employment. The claimant asked for a leave of absence from July 8, 2010, to July 22, 2010. The claimant was provided with the necessary paperwork to obtain this leave of absence. The claimant never provided the medical information requested by the employer and never returned to work. After she was formally separated from her employment, the claimant called and said that she had quit her job. The claimant did not testify at the hearing and her reasons for quitting are unknown. The most reasonable inference from the evidence is that the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated January 31, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css