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

CANDI P COURTER
Claimant

APPEAL NO: 14A-UI-00437-DW

ADMINISTRATIVE LAW JUDGE DECISION

WAL-MART STORES INC
Employer

OC: 12/15/13
Claimant: Respondent (4)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 7, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she voluntarily quit for reasons that qualify her to receive benefits. The claimant participated at the March 18 hearing with her attorney, Joshua Gaul. David Williams, a representative with Equifax, appeared on the employer behalf. Heather Snyder and Jennifer Havlovik testified on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

Has the claimant been overpaid any benefits she has received since December 15, 2013?

Is the claimant or is the employer responsible for paying back any overpayment?

FINDINGS OF FACT:

The claimant started working full time for the employer in June 2011. The claimant was a merchandise supervisor.

In September 2013, the claimant transferred to the Jordan Creek store because of issues she had at the Ankeny store. Unfortunately, the claimant experienced the same sort of situation at the Jordan Creek store. The claimant did not believe she had enough employees in her department to get all her job duties done. At the Ankeny store, she received a warning for failing to get her job completed and was fearful she would get a warning or be terminated at the Jordan Creek store for this same problem. The claimant's supervisor at the Jordan Creek store did not give the claimant any warnings for unsatisfactory job performance.

During the holiday season management told employees, including the claimant, there would be times they would be called to perform other jobs. The claimant and other supervisors were given the choice of running a register or pushing carts. The claimant chose pushing carts.

Right before Thanksgiving, Havlovik needed more people to run the registers. When there were not enough employees to run the registers, Havlovik was advised to go around the store and ask supervisors and managers to help check out customers. When she asked the claimant to run a register, the claimant told her no because she did not run registers. Since upper level management told managers that everyone was to help with registers or push carts or clean restrooms, Havlovik then told the claimant to clean restrooms. The claimant did not go to the restrooms. Instead, she went back to the work she had been doing because she only had an hour left to get this work completed.

Later when Havlovik asked the claimant to sign a warning for insubordination, the claimant declined to sign the warning. The next day when the claimant talked to the store manager and explained her situation, he told her he would remove the warning from her file but in the future she was to follow Havlovik's directions.

The claimant worked as scheduled on December 5, 2013. The stress of trying to make sure she completed her job responsibilities when she and her staff were pulled away to do other jobs became too much for the claimant. The stress of the job adversely affected her health. The claimant realized that with the holiday season she would not get any more employees and her workload would increase. The claimant called in sick three days. On December 13, the claimant told Snyder she had to quit and her resignation was effective immediately. Snyder did not ask the claimant why she quit.

The claimant established a claim for benefits during the week of December 15, 2013. The claimant filed claims for the weeks ending December 21, 2013, through March 15, 2014. She received her maximum weekly benefit amount of $261.00 for each of these weeks. The claimant participated at the fact-fining interview, but the employer did not. (Claimant Exhibit A.) The employer attempted to fax in documents for the fact-finding interview, but the documents he attempted to send were not successfully transmitted. The employer's representative did not try to fax the documents until they were successfully transmitted.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The claimant established personal reasons for quitting. The claimant was naturally fearful that the Jordan Creek manager would discipline or even discharge her if she was unable to complete her job duties satisfactorily. But the claimant's job at the Jordan Creek store was not in jeopardy when she resigned on December 13. Jordan Creek management was not dissatisfied with her job performance. The store manager even discarded the written warning Havlovik gave her for insubordination. The claimant did not establish she quit for intolerable or detrimental working conditions. The claimant asserted she quit because the stress of being short on staff affected her health. While this may be true, the claimant did not satisfy the requirements of 871 IAC 24.26(6)b.

The claimant quit for personal reasons, but did not establish that she quit for reasons that qualify her to receive benefits. As of December 15, 2013, the claimant is not qualified to receive benefits.

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.

Based on this decision, the claimant has been overpaid $3,393.00 in benefits she received for the weeks ending December 21, 2013, through March 15, 2014. The fact a claims specialist attempted to fax documentation for the fact-finding hearing and knew the fax was not successfully transmitted does not establish that the employer participated at the fact-finding interview. The claims specialist could have tried to fax the documentation again or could have called to provide information for the fact-finding interview, but did not. The employer did not participate at the fact-finding interview. As a result, the employer's account will be charged $3,393.00 and the claimant is **not** responsible for paying back the overpayment.

DECISION:

The representative's January 7, 2014 determination (reference 01) is modified. The claimant voluntarily quit her employment for personal reasons that do not qualify her to receive benefits. As of December 15, 2013, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The claimant has been overpaid $3,393.00 in benefits she received for the weeks ending December 21, 2013, through March 15, 2014. The claimant is **NOT** responsible for paying back these benefits. Instead, the employer's account is charged $3,393.00.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css