

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M TAYLOR
Claimant

APPEAL NO. 10A-UI-09312-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 04/18/10
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated June 18, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 16, 2010. The claimant participated. The employer participated by Jason Rainboth, assistant manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jessica Taylor was employed by Wal-Mart Stores for approximately seven months before voluntarily leaving her employment on April 8, 2010. Ms. Taylor worked as a part-time cashier, averaging approximately 20 hours per week. The claimant was paid by the hour. Her immediate supervisor was Jenny Simon.

Ms. Taylor left her employment because of dissatisfaction with the number of working hours she was assigned as a part-time employee and because she anticipated she would be discharged because she did not attend a "decision day" meeting on April 8, 2010. Ms. Taylor had received a number of warnings for poor attendance from Wal-Mart Stores and had been given a "decision day" on April 8, 2010, to decide whether she wanted to continue her employment. If the claimant wished to continue her employment, she was required to turn in a statement to that effect indicating how she planned to improve her attendance.

Ms. Taylor reported to the Wal-Mart facility on April 8, 2010, and planned on turning in her paperwork and attending the required meeting but chose to leave the facility after receiving a "personal call" on her telephone while at the Wal-Mart facility. Ms. Taylor did not tell her employer that she would not be attending the meeting on the paid "decision day" and anticipated that she would be discharged because she had chosen to leave the premises that day because of the personal telephone call. Although Ms. Taylor had been absent on a number of occasions because of sickness and/or weather, she nevertheless was dissatisfied with the number of working hours.

The employer tends to give part-time employees 16 hours or more of work each week but guarantees no minimum number of hours per week for part-time employees. Ms. Taylor was aware that she was not guaranteed any minimum number of working hours. Because of a hiring freeze, the employer had elected to hire four part-time employees to replace two full-time employees who had left. The new part-time employees were assigned to work hours that current part-time employees were not available for.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if the conditions persist in order to preserve eligibility for benefits. See Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). The evidence in the record establishes that although Ms. Taylor complained about her number of working hours to her immediate supervisor, Ms. Taylor did not choose to go up the chain of command to complain further if she felt a sufficient number of working hours were not being assigned to her or that the hours were being assigned unfairly. The evidence in the record establishes that part-time employees are not guaranteed any minimum number of working hours each week but that the employer will attempt to accommodate employees when they are able to do so.

The administrative law judge concludes that the primary reason Ms. Taylor left her employment on April 8, 2010, was because she had decided to not attend a "decision day" meeting that day because she had received a "personal call" while at the Wal-Mart facility and had decided to go home. The claimant thus anticipated that her additional attendance infraction and her failure to attend the mandatory meeting would result in her termination from employment. The claimant has not established that her leaving that day was necessitous or compelling, as the claimant declined to provide any testimony about the nature of the call.

Based upon on the totality of the evidence in the record, the administrative law judge concludes that the claimant left employment without good cause attributable to the employer. There was no change in the contract under which the claimant was hired. The claimant did not go up the chain of command when she felt her initial complaints were not being addressed and because she anticipated she would be discharged because she had chosen to return home after receiving a personal call instead of attending a mandatory "decision day" meeting that day. Benefits are withheld.

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 issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated June 18, 2010, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw