

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARIK NEHMATULLAH
Claimant

APPEAL NO. 10A-UI-13008-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/15/10
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated September 7, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on November 3, 2010. Claimant did not participate. Employer participated by Brian Becker, Assistant Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tarik Nehmatullah was employed by Wal-Mart Stores, Inc. from November 10, 2009 until August 13, 2010 when he left employment voluntarily. Mr. Nehmatullah worked as a full-time accounting associate and was paid by the hour.

Mr. Nehmatullah left his employment with Wal-Mart Stores, Inc. on August 13, 2010 when he called to inform the employer he was quitting because of "personal family issues." Claimant stated, "He could not work anymore."

Prior to leaving, Mr. Nehmatullah had not complained about working conditions or indicated in any manner that he would be required to quit his employment if working conditions or the work environment were not changed by the company. Work continued to be available to Mr. Nehmatullah at the time he chose to leave employment.

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. 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. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

The evidence in the record establishes that Mr. Nehmatullah did not leave his employment because of detrimental working conditions but because of a personal desire to spend more time taking care of personal matters related to the care of his family. The employer was not aware of any job related dissatisfaction on the part of the claimant. Inasmuch as the claimant did not give the employer an opportunity to resolve any complaints that he may have had prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

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.

DECISION:

The September 7, 2010, reference 01, decision is reversed. Claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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