

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY W ASIGBEE

Claimant

APPEAL NO. 10A-UI-04670-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

Original Claim: 02/14/10

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's March 10, 2010 decision (reference 01) that concluded Anthony W. Asigbee (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 20, 2010. The claimant participated in the hearing. Lori McDermott appeared on the employer's behalf. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 7, 2007. He worked part-time (about 32 hours per week) as an automotive sales associate in the employer's Cedar Rapids, Iowa store. His four- to eight-hour work shifts were scheduled between 11:30 a.m. and 8:30 p.m. on Monday, Tuesday, Thursday, and Friday, and between 2:00 p.m. and 9:00 p.m. on Saturday, although he did not always work all five days. His last day of work was February 2, 2010.

The claimant called in sick on February 4, February 5, February 6, February 8, and February 9. On February 11, February 12, February 13, February 15, and February 16 he was a no-call, no-show. On February 16 the claimant's mother went and spoke to Ms. McDermott, assistant manager, and explained that the claimant had been having some personal problems, and asked if the claimant would be able to return to work. Ms. McDermott indicated that the claimant should come in before 8:00 p.m. that evening and they would try to work things out. The claimant did not come in to speak to Ms. McDermott, as he believed that the employer would not take him back after so many no-call, no-shows, but that Ms. McDermott would only discharge him if he did come in to speak to her. A further consideration in his decision not to

come in to speak with Ms. McDermott was resentment he felt because of a reprimand he had been given in mid-January 2010 for taking an additional lunch break when he voluntarily stayed to work an extra half-hour to cover for a coworker who went home early due to illness. When the claimant did not make any further attempt to return to work, the employer considered him to have voluntarily quit.

The claimant established a claim for unemployment insurance benefits effective February 14, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

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. The rule further provides that there are some actions by an employee that are construed as being voluntary quit of the employment, such as where an employee fails to report and perform duties as assigned or where an employee believes he has been or will be discharged but was not told by the employer that in fact he has been discharged. 871 IAC 24.25.

The claimant ceased reporting for work because he believed he would be discharged if he sought to return, but he was never told the employer had decided to discharge him; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that it was intolerable or detrimental. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's March 10, 2010 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 16, 2010, 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, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw