

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTAL L IRWIN
Claimant

APPEAL NO. 11O-UI-04876-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/14/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated December 8, 2010, reference 01, which held that no disqualification would be imposed regarding Kristal Irwin's separation from employment. After due notice was issued, a hearing was held by telephone on February 8, 2011. The decision of the administrative law judge, dated February 9, 2011, reversed the allowance and Ms. Irwin filed a further appeal. On April 12, 2011, the Employment Appeal Board remanded the matter for a new hearing because Ms. Irwin had not received notice of the prior hearing.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on May 19, 2011. Ms. Irwin participated personally. The employer participated by Steve Bourbonn, Assistant Manager.

ISSUE:

At issue in this matter is whether Ms. Irwin was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Irwin began working for Wal-Mart on July 15, 2010 as a full-time associate. Her last day of work was October 22. She then missed 28 days of scheduled work beginning October 24 through and including December 1. She did not call the employer to report the intended absences. Letters were sent to her on November 2 and 17 but there was no response from Ms. Irwin. The employer also tried to reach her by going through her worker's compensation case manager. The case manager indicated she had not been in contact with Ms. Irwin. The employer did not take steps to remove her from payroll until December 6, 2010. Continued work would have been available if she had continued reporting.

Ms. Irwin filed a claim for job insurance benefits effective November 14, 2010. She has received a total of \$2,322.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Ms. Irwin abandoned her job when she stopped reporting for available work as of October 24, 2010. The employer did not have any doctor's statements taking her off work effective October 24. She acknowledged that her doctor released her to return to light duty, which the employer was already providing, effective November 14. She still did not return to work at that point. She was not told by Wal-Mart that her job was no longer available. For the above reasons, it is concluded that Ms. Irwin initiated her separation from employment. Therefore, it was a voluntary quit.

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence failed to establish any good cause attributable to the employer for Ms. Irwin's separation. The employer had been providing her with light-duty work prior to October 24. There is no reason to believe it would not have continued doing so after she was released to light-duty work on November 14. The administrative law judge does not believe her case manager told her she no longer had a job as the case manager is not a Wal-Mart employee. The fact that she was retained on the payroll through December 1 suggests that Wal-Mart had not authorized anyone to discharge Ms. Irwin on November 14. Since the evidence does not establish any good cause attributable to the employer for the quit, benefits are denied.

Ms. Irwin has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated December 8, 2010, reference 01, is hereby reversed. Ms. Irwin quit her employment without good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Irwin will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css