

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CARRIE J SICKLER
1120½ W THOMAS
SHENANDOAH IA 51601

WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10881-RT
OC: 09-12-04 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated October 1, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Carrie J. Sickler. After due notice was issued, a telephone hearing was held on November 1, 2004 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Terry Schreiner, store manager for the employer's store in Shenandoah, Iowa, participated in the hearing for the

employer. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer as a part-time cashier from March 9, 2004 until she voluntarily quit on June 9, 2004. The claimant averaged approximately 30 hours per week. On June 9, 2004, the claimant came in and spoke to the store manager, Terry Schreiner, the employer's witness. The claimant informed Mr. Schreiner that she was experiencing personal problems which were affecting her work and she was not going to be able to make it to work. The claimant did not work for the employer thereafter but came in on June 19, 2004 and completed the exit interview as shown at Employer's Exhibit 1. The claimant has not returned to the employer and offered to go back to work. The claimant never expressed any concerns to Mr. Schreiner about her working conditions nor did she ever do so to anyone else that Mr. Schreiner heard about. The claimant never indicated or announced an intention to quit to Mr. Schreiner if any of her concerns were not addressed by the employer, nor did she do so to anyone else that Mr. Schreiner heard about. Although the claimant had been having attendance problems, the claimant was not facing discharge. If the claimant had not quit, work would have been and remained available for the claimant. Pursuant to her claim for unemployment insurance benefits filed effective September 12, 2004, the claimant has received unemployment insurance benefits in the amount of \$177.00 as follows: \$59.00 per week for three weeks from benefit week ending September 18, 2004 to benefit week ending October 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

871 IAC 24.25(20), (23), (28) provide:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

(28) The claimant left after being reprimanded.

The first issue to be resolved is the character of the claimant's separation. The employer's witness, Terry Schreiner, store manager for the employer's store in Shenandoah, Iowa, credibly testified that the claimant came in and spoke to him on June 9, 2004 and informed him that she could not continue to make it to work because she was experiencing personal problems at home which were affecting her work. This is confirmed by the exit interview signed by the claimant on June 19, 2004 as shown at Employer's Exhibit 1. That form notes that the claimant's separation is a voluntary termination and indicates that it was because of personal problems, work and home life were not working out. Mr. Schreiner also credibly testified that although the claimant was having some attendance problems, she was not facing imminent discharge and worked remained for her to do if she had not quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on June 9, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide evidence of reasons attributable to the employer for her quit. Mr. Schreiner credibly testified that the claimant quit because she was having personal problems at home which were affecting her work. Leaving voluntarily because of compelling personal reasons when the period of absence exceeds ten working days is not good cause attributable to the employer, nor is leaving work voluntarily due to family responsibilities or serious family needs. There was some evidence that the claimant was having attendance problems but that she was not facing an imminent discharge. This is in the nature of a reprimand and leaving work voluntarily because of a reprimand is also not good cause attributable to the employer. Finally, there is no evidence that the claimant ever expressed any concerns to the employer about her working conditions or indicated or announced an intention to quit if any of her concerns were not addressed by the employer. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she qualifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$177.00 since separating from the employer herein on or about June 9, 2004 and filing for such benefits effective September 12, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 1, 2004, reference 02, is reversed. The claimant, Carrie J. Sickler, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. The claimant is overpaid unemployment insurance benefits in the amount of \$177.00.

tjc/tjc