

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A FANCHER
Claimant

APPEAL NO. 14A-UI-01388-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/03/13
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for non participation at Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 29, 2014, reference 05, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 27, 2014. Claimant participated. Employer participated by Sean Schnecklota, Store Manager and Nancy Kinsey, Human Resource Manager.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 23, 2013. Claimant went off work September 4, 2013 due to a non-work-related health issue. Employer sent claimant a letter by certified mail December 9, 2013 asking claimant to report in three days to discuss the lack of documentation. Claimant failed to contact employer to resolve the problem. Claimant was able to return to work in late November yet failed to report in. Claimant did not obtain a release to return to work from her doctor. Continued work was available.

Employer did not know if they had participated at the fact-finding interview.

There is no evidence that proves claimant participated at fact finding.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the

employment relationship because she did not obtain proof to justify a leave of absence. Claimant has the burden of providing medical information to justify a leave of absence. Claimant did not provide the required information notwithstanding a warning giving her three days to report in. Furthermore, claimant was able to return to work but completely failed to return and ask for her job back. This is a quit for personal reasons not related to work. Good cause attributable to employer has not been established.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the

employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

This matter is remanded to the claims section for determination of claimant's overpayment and waiver of the overpayment.

This matter is remanded to determine employer's participation at fact finding and the amount of charges made to employer's account.

DECISION:

The decision of the representative dated January 29, 2014, reference 05, is reversed and remanded for determination of claimant's overpayment, claimant's waiver of overpayment, whether employer participated at fact finding and employer's account charges. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs