

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI J YATES
Claimant

APPEAL NO. 07A-UI-02971-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 02/18/07 R: 03
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated March 13, 2007, reference 01, decision. The decision allowed benefits to the claimant, Terri Yates. After due notice was issued, a hearing was held by telephone conference call on April 10, 2007. The claimant did not provide a telephone number where she could be contacted and did not participate. She did submit a written statement with some proposed exhibits and although she did not specifically indicate these were to be used in lieu of personal testimony, they were admitted into the record as Exhibit A. The employer participated by Business Manager Joe Bolt.

ISSUE:

The issue is whether the claimant quit.

FINDINGS OF FACT:

Terri Yates was employed by Wal-Mart from June 5, 2006 until March 23, 2007, as a full-time membership desk associate. At the time of hire she received a copy of the employee handbook which sets out the attendance and disciplinary policies. An employee who is absent due to illness and has a doctor's excuse covering the absence will be excused for the first three incidents in a six-month period. Any absences after that, even if covered by a doctor's excuse, will be considered unexcused although the entire period of absence will only be counted as one incident for the period specified in the doctor's note. The policy also states three days of being no-call/no-show to work is a voluntary quit.

Ms. Yates had absences covered by a doctor's excuse for December 24 until 26, 2006, January 4 through 16, 2007, and February 9, 2007. Her last day of work was February 12, 2007, and she notified the employer on February 13, 2007, she would be absent until February 20, 2007, and had a doctor's note to cover the period. She spoke with Business Manager Joe Bolt who reminded her of the policy which would count this period as one incident of unexcused absenteeism since this was the fourth extended absence in a six-month period. He also reminded her that three unexcused absences would result in a verbal warning.

The claimant was to return to work on February 20, 2007, but was no-call/no-show to work. Personnel Manager Jill Bressler attempted to call her several times on that day and on her next two scheduled days of work which were February 22 and 23, 2007. Ms. Yates would answer the phone but as soon as Ms. Bressler identified herself, she would hang up.

After three days of no-call/no-show to work she was considered a voluntary quit and was sent a certified letter notifying her of this. Three attempts were made to deliver the letter and it was refused on each occasion.

Terri Yates has received unemployment benefits since filing a claim with an effective date of February 18, 2007.

REASONING AND CONCLUSIONS OF LAW:

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(4) provides:

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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was not in danger of being discharged after her last absence in February 2007. She was merely being reminded that the absence would count as one incident of unexcused absenteeism and would initiate the first step of the progressive disciplinary process if she had a total of three. This is not a discharge but a notice and reminder of the company policy. The claimant's decision not to return to work and be no-call/no-show for three days must be considered a voluntary quit without good cause attributable to the employer. She is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 13, 2007, reference 01, is reversed. Terri Yates is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,106.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css