

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN MCCLINTIC**  
Claimant

**APPEAL NO: 06A-UI-08625-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 07-23-06 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 17, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 13, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Steve Winn, Business Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time overnight stocker for Wal-Mart from October 4, 2005 through July 27, 2006. He was a no-call/no-show on July 23, 24 and 25, 2006. On April 28, 2006, he received a coaching for improvement for accumulating five unapproved absences in a rolling six-month period; on June 10, 2006, he received a written warning for attendance; and on June 23, 2006, he received a decision-making day because of attendance. The employer determined the claimant voluntarily left his employment July 27, 2006, after the three no-call/no-shows.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

Inasmuch as the claimant failed to report for work or notify the employer for three consecutively scheduled workdays in violation of the employer's policy, he is considered to have voluntarily left employment without good cause attributable to the employer. Therefore, benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The August 17, 2006, reference 01, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$446.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/cs