

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE BLOYER
Claimant

APPEAL NO. 11A-UI-02991-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/26/10
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 24, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 1, 2011. Claimant participated. Employer participated by Jerry Hill, asset protection coordinator/manager, and Lynn Marich-Weets, training coordinator. The record consists of the testimony of Lynn Marich-Weets; the testimony of Jerry Hill; the testimony of Julie Bloyer; and Employer's Exhibits 1-4.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a full-time overnight cashier at the employer's store located in Clinton, Iowa. The claimant's date of hire was September 30, 2008. The claimant's last day of actual work was December 26, 2010. She called in sick on December 28, 2010, and December 29, 2010. (Exhibit 1) The claimant was deemed to have abandoned her job due to five instances of no call/no show. Her separation date was January 21, 2011.

The claimant was scheduled to work on January 15, 2011; January 16, 2011; January 17, 2011; January 18, 2011; and January 19, 2011. The claimant did not report to work and did not call in to report her absence. The claimant did not check the schedule between December 26, 2010, and January 20, 2011. When she did use the computer on January 20, 2011, she was told she was an unauthorized user. The claimant never attempted to contact her employer by telephone or in person after she called in sick on December 29, 2010. She did not contact her employer to find out why she was an unauthorized user.

The claimant's work schedule was posted in the store. She could also access her schedule by computer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The greater weight of the evidence is that the claimant is the party that initiated the separation of employment. The claimant came to the conclusion that she had been laid off. She based this conclusion on the fact that she was not on the schedule when she checked on December 26, 2010. She may have checked in the first part of January 2011. The claimant said she was waiting for a phone call telling her to come back to work. The claimant did not go to the store to check the schedule. She did not call her employer to find out her status. She did not check the computer until January 20, 2011, when she was informed that she was an unauthorized user. She then decided she was terminated. She did not call the store to find out why she was unauthorized or what her status was.

Jerry Hill testified that an employee's schedule is finalized two weeks ahead of time and is immediately posted on the computer. It is also posted in the store. The claimant made no meaningful effort to check the schedule and assumed she would get a call. The claimant was aware of how to check her schedule. She simply failed to do so. As a result she had five instances of no call/no show. The employer could reasonably believe that she abandoned her job. The administrative law judge concludes that the claimant voluntarily quit her job without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated February 24, 2011, reference 02, is reversed. 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. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs