

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENAN BERISHA**

Claimant

**APPEAL NO: 09A-UI-00875-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 12/14/08 R: 02**

**Claimant: Appellant (1/R)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Kenan Berisha (claimant) appealed an unemployment insurance decision dated January 16, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Wal-Mart Stores, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2009. The claimant's sister, Nurtene Campbell, participated in the hearing on his behalf. The employer participated through Joshua Bonney, Co-Manager and Pete Scheurman, Store Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time sales associate since January 31, 2002 and became the pet department manager on January 1, 2005. He continued in this capacity through his last day of employment on June 6, 2008. The claimant took vacation after that date before obtaining a leave of absence from July 7, 2008 through August 17, 2008. The claimant should have returned to work after August 17, 2008 but was a no-call/no-show on August 18 and 19, 2008. He returned to work on August 20, 2008 and voluntarily quit. He told the employer he was quitting his employment due to career opportunities with more money.

The claimant's sister, Nurtene Campbell, testified on his behalf since he left the country on December 24, 2008 to go to Kosovo. He intends to return in March 2009. His sister testified their mother is in Kosovo and suffering from cancer. The claimant decided it would be easier for him to go take care of their mother since his sister has children. His sister testified the claimant quit his employment because he did not have enough help and because he accepted a better

job with Road Safe. There are no reported wages from any employer since the claimant left the employer herein.

The claimant filed a claim for unemployment insurance benefits effective December 14, 2008 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant's sister testified that he quit due to lack of help with work and because he obtained a new job. However, no proof of wages was provided and there are no wage records in Iowa Workforce records from any employer subsequent to the employer herein. There is insufficient evidence to establish the claimant quit for other employment. Furthermore, the claim that he quit due to lack of help in his department is questionable since he had not even been at work for two months prior to when he quit.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied as of December 14, 2008.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits. .

**DECISION:**

The unemployment insurance decision dated January 16, 2009, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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