

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK PHOMPHAKDY
Claimant

APPEAL NO: 09A-UI-03052-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/25/09
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 13, 2009 decision (reference 01) that concluded Jack Phomphakdy (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2009. The claimant did not respond to the hearing notice and no one appeared on his behalf. Tonya Hillmer, an assistant manager, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work as a part-time electronic sales associate. The claimant began working on January 29, 2008. Hillmer supervised the claimant. The employer's policy informs employees that after they have three no-call/no-show incidents, the employer considers the employee to have voluntarily quit employment.

The claimant did not call or report to work on November 1, 2008. The employer talked to the claimant and warned him about the three no-call/no-show policy. The claimant did not call or report to work as scheduled on December 20 and 22. As of December 23, the employer considered the claimant to have voluntarily quit his employment after his third no-call/no-show on December 22. After the claimant talked to the employer and explained his situation, the employer reinstated the claimant as a part-time employee on December 29, 2008.

The claimant was next scheduled to work on January 17 and 19. The claimant properly notified the employer he was unable to work as scheduled these days because of a death in the family. The claimant was next scheduled to work on January 21, 23 and 24. The claimant did not call

or report to work these days. The claimant did not contact the employer again. When the claimant again did not call or report to work as scheduled on January 21, 23 and 24, the employer considered the claimant to have quit by abandoning his employment.

The claimant established a claim for benefits during the week of January 25, 2009. The claimant filed some weekly claims and has received some benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.

After the employer reinstated the claimant on December 29, the claimant knew or should have known his job was in jeopardy if he again failed to notify the employer when he was unable to work as scheduled. The claimant properly notified the employer that he was unable to work as scheduled on January 17 and 19. The claimant's failure to contact the employer anytime after January 19 even though he was scheduled to work establishes the claimant quit by abandoning his employment.

When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2. Since the claimant did not participate in the hearing, the facts do not establish that he quit for reasons that qualify him to receive benefits. Even though the claimant only worked part-time for the employer, 871 IAC 24.27 does not apply because the only wages in the claimant's base period are from the employer. Therefore, as of January 25, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since January 25, 2009, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's February 13, 2009 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment and did not establish that he quit for reasons that qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of January 25, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue

of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css