

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**VELVET BARNEY**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL NO. 14A-UI-04863-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/13/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated April 30, 2014, (reference 01), which held that Velvet Barney (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2014. The claimant participated in the hearing. The employer participated through Ivar Vantol, Assistant Manager and Tammy Tramble, Employer Representative.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time overnight cashier from November 18, 2011, through March 10, 2014, when she voluntarily quit to move to Chicago, Illinois. She had received numerous warnings for attendance but was not going to be discharged for attendance at the time she quit.

The claimant received a written warning for insubordination on November 12, 2013. A second written warning was issued for attendance on January 13, 2014, and a third written warning was issued for attendance on March 3, 2014. The claimant missed work on March 4 and 5, 2014, but properly reported her absences. Shift Manager Wesley Alexander spoke with the claimant on March 6, 2014, and issued a final warning. The claimant worked her full shift on March 7, 2014, and on March 10, 2014, she told Assistant Manager Ivar Vantol that she was quitting to move to Chicago on the following day. The claimant currently lives in Chicago.

The claimant filed a claim for unemployment insurance benefits effective April 13, 2014, and has received benefits after the separation from employment in the amount of \$1,464.00. Employer

Representative Brian Flannery provided written documentation for the fact-finding interview. The documentation provided separation information and the exit interview.

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

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

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out on March 10, 2014, when she told Assistant Manager Ivar Vantol that she was quitting to move to Chicago on the following day.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The law presumes it is a quit without good cause attributable to the employer when an employee leaves to move to a different locality. 871 IAC 24.25(2). The claimant's separation was without good cause attributable to the employer and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received \$1,464.00 in unemployment insurance benefits. The benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the voluntary quit. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$1,464.00.

**DECISION:**

The unemployment insurance decision dated April 30, 2014, (reference 01), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid benefits in the amount of \$1,464.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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