

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA L ACOSTA

Claimant

APPEAL NO: 14A-UI-03700-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/02/14

Claimant: Respondent (4)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(4) – Job Abandonment
Section 96.3-7A,B – Recovery of Overpayment
871 IAC 24.10 – Employer Fact Finding Participation

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 26, 2014, reference 01, that held the claimant voluntarily quit with good cause attributable to her employer on March 7, 2014, and benefits are allowed. A hearing was held on April 28, 2014. The claimant participated. Jennifer Browning, Store Manager, participated for the employer.

ISSUES:

Whether the claimant voluntarily quit with good cause attributable to the employer.

Whether claimant is overpaid unemployment benefits.

Whether employer participated in department fact finding.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on August 28, 1992, and last worked for the employer as a full-time front end zone supervisor on March 7, 2014. The claimant had been issued some written discipline leading to an employer meeting on March 7, 2014.

The store manager, asset prevention person met with claimant to question her about a schedule change that occurred the month before. A security video showed claimant working with an assistant manager who left for a while, and claimant changing her work schedule. A shift manager reported this because claimant usually worked a rotating schedule and the change was out of the ordinary.

Claimant admitted changing her work schedule during employer questioning. When the asset protection person made a comment he was going to a higher management level to take claimant's badge, she responded you can have it now, turned in her keys, walkie and left the

store. When the employer did not hear from claimant and she failed to report for three consecutive days, it applied its three-day no-call/no-show policy that claimant had abandoned her job. Claimant offered at department fact finding she thought she was going to be fired as the reason she walked out. When she filed her unemployment claim she stated she quit.

The employer representative submitted a brief fact information sheet for department fact finding that claimant had voluntarily quit employment. Claimant has received unemployment benefits totaling \$2,040.00 for the seven weeks ending April 19, 2014. She committed no act of fraud or misrepresentation to obtain these benefits.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes claimant voluntarily quit without good cause attributable to the employer due to job abandonment on March 7, 2014.

Claimant contends the employer was going to discharge her as the reason she walked-out and quit. She admits the asset protection person said he was going to higher level manager to take her badge. A reasonable person who had worked more than 21 years for the employer knew she was not being discharged on March 7 at that time.

Claimant further contends the employer prior discipline and questioning about a schedule change on March 7 is harassment that is a good cause for quitting. There is no evidence claimant had made any attempt to question higher level management or go to corporate with her case. Good cause for quitting is not established.

Iowa Code section 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.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The administrative law judge further concludes claimant is overpaid benefits \$2,040 for the seven week period ending April 19, 2014 due to the disqualification imposed in this matter.

The administrative law judge further concludes claimant is relieved from a repayment of the overpayment because the employer representative written statement does not constitute adequate participation. A bare statement claimant quit without meaningful facts is inadequate to determine whether claimant had a good cause for quitting. The employer's account is charged with benefits paid to claimant. There is no evidence of claimant fraud or misrepresentation to obtain benefits.

DECISION:

The department decision dated March 26, 2014, reference 01, is modified. The claimant voluntarily quit without good cause attributable to her employer on March 7, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is not required to repay the \$2,040.00 overpayment and is charged to the employer's tax account.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css