

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AARON K DOUGLAS
2084 EMILY DR
DUBUQUE IA 52003**

**WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-05982-DT
OC: 04/18/04 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's May 19, 2004 decision (reference 03) that concluded Aaron K. Douglas (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2004. The claimant participated in the hearing. Robert Harding appeared on the employer's behalf and presented testimony from one other witness, Tom Duddeck. 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.

FINDINGS OF FACT:

The claimant started working for the employer on October 28, 2003. He worked full time as a technician in the employer's Dubuque, Iowa express lube department. His last day of work was March 13, 2004.

The claimant had been given several warnings for attendance, both absences and tardiness. He was given a final written warning earlier in the week of March 8. After an additional tardy, the claimant was given a paid decision day/suspension on March 12. He returned to work on March 13 with a written action plan asserting that he would strive harder to be at work on time. He then worked his regular shift from 8:00 a.m. to 6:00 p.m.

At approximately 4:30 p.m., the claimant went to assist another employee jump-start her car. He had difficulties, and was ultimately unsuccessful. He returned to the lube department at approximately 5:15 p.m. Mr. Duddeck, the assistant department manager, had apparently been unaware of why the claimant was away from the department. When the claimant returned, Mr. Duddeck remarked how he had had to stay to cover for the claimant not being in the department. He suggested that the claimant should just quit if he was not going to take his responsibilities seriously. Later, the claimant attempted to assist Mr. Duddeck in moving some tires in, and Mr. Duddeck told him that he did not need the claimant's help. The claimant then finished out his shift and left.

The next day the claimant was again scheduled to work from 8:00 a.m. to 6:00 p.m. He was a no-call/no-show for work, but at approximately 12:00 p.m. came in the back of the department to bring in his work clothes, telling coworkers that he was "done." Mr. Duddeck went out the back and caught the claimant as he was preparing to pull out, and told the claimant that he should come in and discuss the situation, but the claimant merely indicated he was done, and left. The claimant asserted that he believed that he had been discharged after the discussion the evening of March 13, but further asserted that even if he had not been discharged, when Mr. Duddeck invited him to come in to discuss the situation, he decided he did not want to work there after being reprimanded for assisting with the jump-start attempt.

The claimant established a claim for unemployment insurance benefits effective April 18, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$492.00. That amount has already been found to be overpaid in another representative's decision issued May 21, 2004 (reference 06) due to a disqualifying separation from another employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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.

While Mr. Duddeck might have questioned the claimant's commitment to work, indicated that he did not want the claimant's help, and inferred that if the claimant was not going to be responsible, he should quit, he never told the claimant that he was fired or discharged. No decision to discharge the claimant had been made. Where an individual mistakenly believes that he is discharged and discontinues reporting to work, but was never told he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

Inasmuch as the employer had not told the claimant he was fired and the claimant left prior to determining the status of his employment relationship with the employer, he acted in a manner such that the employer would reasonably believe he had resigned his position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, the claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied that burden. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's May 19, 2004 decision (reference 03) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of March 14, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$492.00 due to this separation, as well as due to the separation from another employer.

ld/kjf