

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M JONES

Claimant

APPEAL NO: 13A-UI-10314-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 08/11/13

Claimant: Respondent (2/R)

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 September 3, 2013 decision (reference 01) that concluded Angela M. Jones (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 4, 2013. The claimant participated in the hearing. Kimberly Vuong appeared on the employer's behalf. One other witness, Lisa Anglen, was available on behalf of the employer but did not testify. 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 for a good cause attributable to the employer?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on June 14, 2013. She worked full time as café team leader in the employer's Council Bluffs, Iowa store, working Monday, Wednesday, Friday, and Saturday, and alternating Tuesdays and Thursdays. Her last day of work was August 1, 2013.

The claimant had been granted approved time off from August 2 through August 6 for a family visit. She was scheduled to return to work on August 7. On August 7 she called in sick, and did so each day through August 14. On August 14 her manager, Vuong, inquired of her as to when she would be returning to work. The claimant explained that she had enrolled in and was taking classes to become a certified medication aide (CMA), and that she could not come back to the employer on a full-time basis because she could only work on weekends. Vuong explained to

the claimant that her job required her to be available for a 40-hour per week schedule during the week. The claimant confirmed that she was not going to continue in that employment. The claimant's job was not in jeopardy had she not determined to leave the position.

The claimant established a claim for unemployment insurance benefits effective August 11, 2013. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The representative's September 3, 2013 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of September 3, 2013, 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 she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs