

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN JOHNSON
Claimant

APPEAL NO. 08A-UI-07738-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/20/08 R: 04
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 August 18, 2008, reference 01, which held that Marilyn Johnson (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 September 9, 2008. The claimant participated in the hearing. The employer participated through Jason Stockwell, Assistant Manager. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time cashier from November 8, 2001 through July 12, 2008 when she quit because she was stressed out. She sustained a work-related injury to her left arm and elbow on June 6, 2008. The claimant was placed on work restrictions of no heavy lifting, pulling, or straining. After she returned to work on light duty, she worked as a greeter and put away returns. The claimant felt the managers were punishing her because she sustained an injury. Managers would tell her that, "you shouldn't have injured your arm" and "we need you on the floor." Some of the managers would roll their eyes or put their hands on their hips and the claimant found that offensive. She was told to go get grocery carts one day and she grabbed four carts which reinjured her arm. No one directed her to try to get four carts at one time. She also had to put away groceries that were heavy but no one told her to violate her restrictions and no one said anything if she refused to lift something heavy. The claimant said three managers yelled at her on July 12, 2008 because she was not putting the right tags on products that were being returned. The other door greeter also yelled at her. The claimant felt she was discriminated against because she is American Indian but no specific details were provided.

The claimant filed a claim for unemployment insurance benefits effective July 20, 2008 and has received benefits after the separation from employment.

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.

The claimant quit her employment because she was stressed out. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The evidence provided by the claimant does not demonstrate an intolerable work environment but rather that the claimant may be overly sensitive. Her separation was for personal reasons and cannot be attributed to the employer.

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. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated August 18, 2008, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css