

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GLORIA D HUGHES**

Claimant

**APPEAL NO. 12A-UI-09711-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 07/01/12**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Wal-Mart Stores (employer) appealed a representative's July 25, 2012 decision (reference 01) that concluded Gloria Hughes (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 27, 2012. The claimant participated personally and through her son, Robert LeMeuse, and husband, Craig Hughes. The employer participated by Mindy Mitchell, Assistant Manager; April Lefebvre, Personnel Coordinator; Jacque Valdez, Zone Merchandise Supervisor; and Bre Hobbs, Zone Merchandise Supervisor. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on August 12, 2010, as a full-time electronic sales associate. The claimant signed for receipt of the employer's handbook on August 12, 2010. The employer asked the claimant's son and husband not to shop in the store because the claimant was spending too much time talking to them while she was supposed to be working.

On June 28, 2012, the assistant manager issued the claimant a coaching for attendance. The claimant walked out during the coaching. On June 29, 2012, the claimant asked to meet the assistant manager. The claimant told the assistant manager that she could earn better money elsewhere and quit work. Continued work was available had the claimant not resigned.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without 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.

871 IAC 24.25(28) 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:

(28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving and quit work. When an employee quits work after having been reprimanded, her leaving is without good cause attributable to the employer. The claimant left work after having been reprimanded. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

It is understandable that the claimant was upset that her family could not shop in the store. It is also understandable that the employer needed the claimant to work and not converse with her family during her working hours. This business decision of the employer was not harassment of the claimant or her family. The employer has a right to restrict access of individuals on its property for business reasons.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible because there were eye witnesses to the events that testified at the hearing. The employer provided one written statement to support its case.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

**DECISION:**

The representative's July 25, 2012 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs