

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANITA M BROWN**

Claimant

**APPEAL NO. 10A-UI-12726-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 07/25/10**

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

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 31, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 27, 2010. Claimant participated. Brent Prunty, Store Manager, represented the employer and presented additional testimony through Judy Gudex, Shift Manager.

**ISSUE:**

Whether Ms. Brown separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Anita Brown was employed by Wal-Mart as a full-time assistant manager from 2004 until July 23, 2010, when she voluntarily quit in response to being reprimanded. Ms. Brown's immediate supervisors were Shift Managers Judy Gudex and Dave Kamil. Brent Prunty was Store Manager. On July 23, Mr. Prunty sent Ms. Brown on a "decision-making day." The decision-making day was prompted by recent absences and Mr. Prunty's belief that Ms. Brown had not provided appropriate notice regarding the absences. Ms. Brown, as a long-term Wal-Mart employee and member of management, was well familiar with the purpose of the "decision-making day" protocol. Ms. Brown understood that the decision-making day was an opportunity for her to decide whether she wished to continue in the employment, and if so, what changes she needed to make to be more successful in the employment. Mr. Prunty sent Ms. Brown on the decision making day with instructions consistent with the protocol. The employer expected Ms. Brown to appear for work on July 24 with a written "plan of action" if she desired to continue in the employment.

On July 24, Ms. Brown neither appeared for work nor contacted the employer to indicate she would be absent. When Ms. Brown did not appear, Ms. Gudex telephoned Ms. Brown's cell phone. Ms. Brown did not answer the cell phone. Ms. Gudex left a message asking Ms. Brown to call her or Mr. Prunty with her decision regarding whether she wished to continue in the employment. Ms. Brown called the store and spoke with a receptionist, who indicated

Ms. Gudex was working a register at the time. Ms. Brown made no further attempt to reach Ms. Gudex.

Ms. Brown made no further contact with the store. On July 26, when the employer had still not received meaningful contact from Ms. Brown, Ms. Gudex telephoned Ms. Brown's cell phone and requested that Ms. Brown return her store keys if she was electing not to return to the employment. Ms. Brown failed to take appropriate steps to return her keys. The employer had to enlist the assistance of law enforcement to retrieve its keys.

At no time did Mr. Prunty or anyone else tell Ms. Brown that she was discharged from the employment. Rather, Ms. Brown feared this would be the next step in the process and elected not to return or make further meaningful contact with the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a person voluntarily separates from employment in response to a reprimand, the separation is presumed to be a voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(28).

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.

The weight of the evidence establishes a voluntary quit in response to a reprimand. The weight of the evidence indicates that Ms. Brown was fully aware of what was expected of her at the time she was placed on the decision-making day on July 23, 2010. Ms. Brown was fully aware that she was to report for work at her normal start time the next day. The weight of the evidence establishes that Ms. Brown elected not to return to the employer or to make further meaningful contact. Much of Ms. Brown's testimony was lacking in credibility. This included Ms. Brown's alleged attempts to make further contact with the employer. Ms. Brown knew full well how to make effective contact with the employer and decided not to take steps to do that. The employer continued to have work available for Ms. Brown.

Ms. Brown voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Brown is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Brown.

Iowa Code section 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 section 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 would 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 Agency representative's August 31, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded 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.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css