

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

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WAL-MART STORES INC
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Appeal Number: 06A-UI-02758-DWT
OC: 02/05/06 R: 03
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 Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 22, 2006 decision (reference 01) that concluded Jeremy L. McManus (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2006. The claimant participated in the hearing. Gray Pavlik and Tim Huep appeared on the employer's behalf. 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.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 27, 2000. The claimant most recently worked on the third shift stocking crew. Huep was the claimant's supervisor.

About two months before his employment separation, the claimant used the employer's open door policy and reported that a supervisor, M.L., showed favoritism to a certain group of people. The claimant learned M.L. told the group of people what the claimant had complained about. These people then gave the claimant the cold shoulder or silent treatment. The claimant then reported to upper management that M.L. and other employees were harassing him by giving him the cold shoulder for using the employer's open door policy to report work-related issues. After the claimant made this complaint, neither M.L. nor any of the group of employees harassed him, but they did not have any interaction with him either.

On February 4, between 11:30 p.m. and midnight, Huep approached the claimant and another associate to give them a verbal warning for talking to one another for seven minutes instead of working. When both employees asked Huep to prove they had been talking for seven minutes, he indicated they were on tape. Huep, did not, however, allow the employees to view the tape. The claimant became upset because he believed Huep should have said something instead of watching them for seven minutes.

The claimant was upset when Huep told him he was receiving a verbal warning. The claimant threw his work smock on the floor and told Huep that he quit. When the claimant told Huep he quit, he did not intend to continue his employment because he believed the employer continued to harass him for using the open door policy when he made a complaint about M.L.

The claimant and Huep went to the office, where the claimant became even more agitated and upset. As a result of the claimant's comments directed to M.L., who was also in the office, Huep told the claimant he was being insubordinate. Huep considered some of the claimant's comments as threats directed to himself and M.L. When Huep completed the exit paperwork, he indicated the claimant had been discharged for gross misconduct. The claimant became even more outraged when the paperwork indicated he had been discharged instead of quitting.

The claimant established a claim for unemployment insurance benefits during the week of February 5, 2006. The claimant filed claims for the weeks ending February 11 through March 4, 2006. The claimant received his maximum weekly benefit amount of \$282.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him

for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. By the time the employer discharged the claimant, he had already quit his employment. The claimant not only verbally told the employer he was quitting, but he also intended to sever the employment relationship. For unemployment insurance purposes, the claimant voluntarily quit his employment. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits without good cause when he quits after he has received a reprimand. 871 IAC 24.25(28). If a claimant quits for intolerable or detrimental working conditions, the law presumes he quits with good cause. 871 IAC 24.26(4). The claimant acknowledged that after he talked to management a second time, M.L. and a group of people did not harass him. While the claimant may have been frustrated with Huep on February 4 for receiving a verbal warning when Huep could have easily walked by much earlier and just told the two employees to get back to work, Huep chose to document how long the two employees talked instead worked. The claimant was frustrated and upset with Huep on February 4, but the evidence does not establish the claimant quit or even worked under intolerable working conditions. The evidence shows that as the direct result of receiving a verbal reprimand, the claimant became upset and quit his employment.

The claimant established compelling personal reasons for quitting. His reasons do not qualify him to receive unemployment insurance benefits. As of February 5, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 11 through March 4, 2006. The claimant has been overpaid \$1,128.00 in benefits he received for these weeks.

DECISION:

The representative's February 22, 2006 decision (reference 01) is reversed. The claimant quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of February 5, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 11 through March 4, 2006. The claimant has been overpaid and must repay a total of \$1,128.00 in benefits he received for these weeks.

dlw/tjc