

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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YARMOUTH IA 52660

WAL-MART STORES INC  
C/O THE FRICK COMPANY-UC EXPRESS  
P O BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11238-BT  
OC: 09/19/04 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated October 6, 2004, reference 01, which held that Lori Pohlman (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 November 12, 2004. The claimant participated in the hearing. The employer participated through Bobbi Frank, Assistant Manager. Employer's Exhibit One was admitted into evidence.

#### 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 March 13, 2002 through September 17, 2004. She voluntarily quit on September 17, 2004 after she was given a decision day or one-day suspension for being late to work. She acknowledged she deserved the decision day due to repeated problems with absenteeism, but was upset with how two managers handled the situation that morning. She had previous problems with these two managers and did not think they treated her fairly. After arriving at work that day, she saw that her name was highlighted and her breaks were crossed off on the schedule. When the claimant walked up front, the two managers did not talk to her so she went to other members of management, who counseled her on attendance and advised her of the decision day suspension. The claimant did not have her car there so could not leave but after thinking about the suspension, she voluntarily quit.

The claimant signed the exit interview form, which indicated she quit as a result of the decision day, the attendance policy, management issues and family concerns. The category checked on the form was that the claimant quit "due to health." The claimant has asthma and had recently hurt her arm at work and did not feel the two managers followed her light duty restrictions. She spoke to some individuals about her problem with the two managers but did not speak to anyone in human resources and never talked with anyone about her intentions to quit until the day it happened.

The claimant filed a claim for unemployment insurance benefits effective September 19, 2004 and has received benefits after the separation from employment in the amount of \$1,330.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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 claimant voluntarily quit on September 17, 2004. She has the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. The claimant quit after she was given a one-day suspension for being late to work. She contends she deserved the decision day suspension but claims she was not treated fairly by two managers and was upset as to how the managers dealt with her that day. The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). However, in order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that she intends to quit unless the conditions are corrected. The employer must be allowed the chance to correct those conditions before the employee takes the drastic step of quitting employment. Although the claimant may have talked to a few individuals about the problem, she never informed the

human resource department and never gave any advance notice that she intended to quit. Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The unemployment insurance decision dated October 6, 2004, 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 claimant is overpaid benefits in the amount of \$1,330.00.

sdb/s