

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN BUTTS

Claimant

APPEAL NO: 16A-UI-05063-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/27/16

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 25, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on May 16, 2016. The claimant participated in the hearing. Ryan Oshel, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier and greeter for Wal-Mart from April 21, 2012 to March 31, 2016. She voluntarily left her employment after an argument with the store manager regarding a requested day off.

On March 15, 2016, the claimant requested April 20, 2015 off work so she could accompany her daughter to a surgical appointment in Iowa City. On March 31, 2016, the claimant tried to talk to the front end assignment manager, Zondra, who does the scheduling but she was busy and unable to speak to the claimant at that time. The claimant became upset and went to Store Manager Ryan Oshel's office and met with him. She was unhappy when she arrived at Mr. Oshel's office and told him Zondra would not speak to her. Mr. Oshel had no knowledge of the claimant's request for time off and consequently had questions for her about her time off. The claimant seemed frustrated with Mr. Oshel, appearing to believe he should simply approve her time off request without asking any questions. The claimant had a set schedule, working 9:00 a.m. to 1:00 p.m. Monday, Tuesday, Thursday, and Friday. Mr. Oshel asked the claimant if the day she was requesting off was one of her scheduled work days and asked her when she put in her request for the time off. The claimant, who was standing in Mr. Oshel's doorway throughout their conversation, became more upset, raised her voice, and rolled her eyes at him. Mr. Oshel told the claimant they simply needed to have a professional conversation and the

claimant stated "I don't need this," before turning around and leaving. Mr. Oshel asked her to come back and have a conversation but the claimant again stated she "did not need this" and continued walking away. Mr. Oshel asked her if she was walking off the job and the claimant walked away without responding. Mr. Oshel then asked the claimant if she was done at the store and the claimant did not answer but continued walking away. Mr. Oshel attempted to call the claimant a couple of days later to see if she planned to return but she did not respond. The employer determined the claimant voluntarily quit her job.

The claimant has claimed and received unemployment insurance benefits in the amount of \$696.00 during the six weeks ending May 7, 2016.

The employer participated personally in the fact-finding interview through the statements of Store Manager Ryan Oshel.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2.

While the claimant maintains Mr. Oshel was sarcastic, rude, and aggressive, it appears the claimant's behavior fell more readily into those categories. She did not ask to meet with Mr. Oshel or tell him what her concern was before coming to his door and remaining in the doorway rather than entering his office where they could have a more business-like conversation. When he reasonably attempted to ask her questions about her time off, the claimant became more frustrated, raised her voice, rolled her eyes, and said she "didn't need this" and walked away. Mr. Oshel first asked the claimant to return and when she refused he asked her if she was walking off the job and whether she was done with the employer but the claimant continued walking away.

Under these circumstances, the administrative law judge concludes the claimant voluntarily left her employment and has not demonstrated that her leaving was for good cause attributable to the employer. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Store Manager Ryan Oshel. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$696.00 for the six weeks ending May 7, 2016.

DECISION:

The April 25, 2016, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant has received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$696.00 for the six weeks ending May 7, 2016.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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