

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

BARBARA L BURNS
8857 STEPHEN RD
MUSCATINE IA 52761

WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09563-CT
OC: 08/01/04 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, 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 Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated August 26, 2004, reference 01, which held that no disqualification would be imposed regarding Barbara Burns' separation from employment. After due notice was issued, a hearing was held by telephone on September 30, 2004. The employer participated by Jerry Driskell, Co-Manager. Ms. Burns did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Burns began working for Wal-Mart on or about June 4, 2004. She was hired to work full-time hours on a temporary basis while the store was being remodeled. She last worked on August 4 but did not complete her shift. She was scheduled to work on August 5, 6, and 9 but did not report for work or contact the employer on any of the three dates. She reported to the workplace on August 10 and signed an "Exit Interview" form acknowledging that she was considered a voluntary quit because she abandoned her job. Continued work would have been available for her until at least September 3, 2004 when the remodeling was completed.

Ms. Burns has received a total of \$396.00 in job insurance benefits since filing her claim effective August 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Burns was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Burns had the burden of proving that her quit was for good cause attributable to Wal-Mart. Iowa Code section 96.6(2). She abandoned her job when she stopped reporting for available work. Ms. Burns did not participate in the hearing to explain why she discontinued going to work. The evidence of record does not establish any good cause attributable to the employer for the quit.

It is true that Ms. Burns was working on a temporary assignment with Wal-Mart. However, she had not been advised of a specific layoff date at the time she stopped reporting to work. Therefore, she did not quit in advance of an announced layoff within the intent and meaning of 871 IAC 24.26(13).

The administrative law judge concludes that Ms. Burns has failed to establish that she had good cause attributable to the employer for quitting. Accordingly, benefits are denied. Ms. Burns had received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated August 26, 2004, reference 01, is hereby reversed. Ms. Burns voluntarily quit her employment with Wal-Mart for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Burns has been overpaid \$396.00 in job insurance benefits.

cfc/tjc