

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY I JUCHTER
Claimant

APPEAL NO. 06A-UI-11677-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10/01/06 R: 04
Claimant: Appellant (1)

Section 96.6-2 – Timeliness of Appeal
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Jeffrey Juchter (claimant) appealed a representative's November 22, 2006 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2006. The claimant participated personally. The employer participated by Beth Hafner, Assistant Manager.

ISSUE:

The issue is whether the claimant filed a timely appeal and whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on November 22, 2006. The claimant did receive the decision and went to his local Workforce Development office on December 1, 2006. The worker told the claimant she was faxing his appeal that day to the Appeals Section. The appeal was not faxed to the Appeals Section until December 6, 2006, after the date the appeal was due.

The claimant was employed as a part-time lube and tire technician from March 10 until August 11, 2006. The claimant did not return to work after August 11, 2006, because he was working a full-time and a part-time job. He felt he could not work that many hours. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did appeal the fact-finder's decision but the worker did not send it to the Appeals Section. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit work without good cause attributable to the employer. The administrative law judge concludes he did.

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.

871 IAC 24.25(18) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(18) The claimant left because of a dislike of the shift worked.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped appearing for work. When an employee quits work because he dislikes the shift he is working, his leaving is without good cause attributable to the employer. The claimant left work because his shift provided him with too many hours. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's November 22, 2006 decision (reference 02) is affirmed. The claimant's appeal is timely. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css