

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

JENNIFER J WALKER
802 N 35TH ST APT 3
COUNCIL BLUFFS IA 51501

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

Appeal Number: 04A-UI-09565-RT
OC: 08-08-04 R: 01
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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits
Section 96.6-2 – Initial Determination (Timeliness of Protest)

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated August 26, 2004, reference 04, allowing unemployment insurance benefits to the claimant, Jennifer J. Walker. After due notice was issued, a telephone hearing was held on September 27, 2004 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Donna Doran, Lead Customer Service Manager; Andy Eckstrom, Co-Manager of the store in Council Bluffs, Iowa; and Gayle Woodard of TALX UC eXpress, participated in the hearing for the employer. Department Exhibit 1 and Employer's Exhibits 1 and 2 were admitted into evidence. The

administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit 1 and Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective August 8, 2004. A notice of the claim was sent to the employer's representative on August 12, 2004. The notice of claim was received by employer's representative. The notice indicated that the deadline for a protest, if any, was August 23, 2004. The employer faxed its protest to Iowa Workforce Development on August 23, 2004 as shown at Employer's Exhibit 1. The employer's protest and the letter accompanying the protest from the employer's representative are both dated August 23, 2004 as shown at Department Exhibit 1. The employer's protest and the letter from the representative do not show the faxed information and so it is impossible to determine from the documents received by the Appeals Section when the protest and letter were faxed.

Because the administrative law judge hereinafter concludes that the employer's protest was timely, the administrative law judge further finds: The claimant was employed by the employer as a part-time cashier from April 9, 2004 until she voluntarily quit on June 1, 2004. The claimant averaged approximately 30 hours per week. June 1, 2004 was the claimant's last day of work. The claimant did not appear for work until June 14, 2004 when she informed the employer that she was quitting and completed an exit interview to that effect indicating that she was quitting to leave the area as shown at Employer's Exhibit 2. The claimant never expressed any concerns to the employer's witness, Donna Doran, Lead Customer Service Manager, nor did she do so to anyone else that Ms. Doran heard about. The claimant also did not indicate or announce an intention to quit to the employer prior to her quit to Ms. Doran or anyone else that Ms. Doran heard about. Had the claimant not voluntarily quit and had she shown up for work, work would have been available to the claimant. The claimant was pregnant and did have some absences but the employer was trying to work with the claimant and she was not discharged.

Iowa Workforce Development records indicate that the claimant is disqualified to receive unemployment insurance benefits pursuant to a disqualifying separation from a subsequent employer, U-Haul International, on July 26, 2004 by decision dated August 27, 2004 at reference 01. This decision does not appear to have been appealed. Pursuant to her claim for unemployment insurance benefits filed effective August 8, 2004, the claimant has received no unemployment insurance benefits being shown as disqualified as a result of a discharge. The claimant filed for only one week of benefits, benefit week ending August 14, 2004, and received no benefits for that week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer established good cause for such failure. The administrative law judge concludes that the employer's protest was filed in a timely fashion and such protest should be accepted and the administrative law judge has jurisdiction to reach the remaining issues.

2. Whether the claimant's separation from employment was a disqualifying event. It was.
3. Whether the claimant is overpaid unemployment insurance benefits. She is not because she has received no such benefits.

Iowa Code section 96.6-2 provides in pertinent part:

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 administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for the delay in the filing of its protest. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that its protest was timely. The employer's protest at Department Exhibit 1 is dated August 23, 2004, as was the letter accompanying the protest. As noted in the findings of fact, the employer's protest was due by August 23, 2004. The employer's witness, Gayle Woodard of TALX UC eXpress, credibly testified that the protest was faxed to Iowa Workforce Development on August 23, 2004 as shown at Employer's Exhibit 1 and, therefore, it is timely. Accordingly, the administrative law judge concludes that the employer did effect a timely protest within the time period prescribed by the Iowa Employment Security Law and, therefore, the administrative law judge concludes that the employer's protest should be accepted and that he has jurisdiction to reach the remaining issues.

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(2) 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:

- (2) The claimant moved to a different locality.

The employer's witness, Donna Doran, Lead Customer Service Manager, credibly testified, and the administrative law judge concludes, that the claimant left her employment voluntarily on June 1, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant

has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for her quit. Ms. Doran credibly testified that the claimant quit because she was leaving the area and this was confirmed by the exit interview at Employer's Exhibit 2 signed by the claimant. Leaving work voluntarily to move to a different locality is not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about her working conditions or ever indicated or announced an intention to quit if any of her concerns were not addressed by the employer. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on or about June 1, 2004 and filing for such benefits effective August 8, 2004. Since the claimant has received no such benefits, she is not overpaid any such benefits.

DECISION:

The representative's decision of August 26, 2004, reference 04, is reversed. The claimant, Jennifer J. Walker, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she voluntarily left her employment without good cause attributable to the employer. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits. The employer has demonstrated that it filed its protest timely and the protest is, therefore, accepted.

tjc/tjc