

**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**

**CLIFFORD BROWN
1614 – 26TH ST
SIOUX CITY IA 51104-3014**

**WAL-MART STORES INC
c/o TALX EMPLOYER SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-06924-DT
OC: 06/04/06 R: 01
Claimant: Respondent (4)**

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)

871 IAC 26.14(7) – Late Call
Section 96.5-1 – Voluntary Leaving
871 IAC 24.27 – Voluntary Quit of Part-time Job
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's June 26, 2006 decision (reference 01) that concluded Clifford Brown (claimant) was qualified to receive unemployment insurance benefits after a separation. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 26, 2006. The claimant received the hearing notice and responded by calling the Appeals Section on July 14, 2006. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the

scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. Mike Jefferson appeared on the employer's behalf. The record was closed at 9:25 am. At 9:59 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant received the hearing notice prior to the July 27, 2006 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The claimant asserted the reason he had not participated was because he thought the issue was already addressed; he had had another hearing on July 19, 2006 regarding two employers who were related to each other but unrelated to the employer Wal-Mart. In speaking with a clerk regarding the fact that he had hearings regarding multiple employers, he understood the clerk to indicate that he would be having all of the hearings regarding all of the employers on the same day, so when he concluded the hearing on July 19 dealing with the two related employers, he had expected another call that day regarding the Wal-Mart separation. At the end of the day when he had not gotten a call, he did not call the Appeals Section to further inquire what had happened to the Wal-Mart hearing that had been scheduled for July 27 as he concluded it would be after the Appeals Section's hours; however, he did not otherwise call the Appeals Section to inquire on July 20, July 21, July 24, July 25, or July 26, 2006. On July 26 he received disqualification decisions issued regarding the hearing on July 19 with the two related employers; those decisions did not address the Wal-Mart separation, but the claimant concluded that since he had been disqualified on that appeal, that the Wal-Mart appeal might be moot. Regardless, he was somewhat expecting a call at the scheduled time for the hearing in this case on July 27, and heard the phone ring, but allowed the call to go to the answering machine and did not check the message to hear that it was the administrative law judge calling for the hearing until a few minutes before calling the judge back at 9:59 a.m.

The claimant started working for the employer on April 13, 2006. He worked part time (29 – 32 hours) as a sales associate in the grocery/dairy department of the employer's Sioux City, Iowa store. He typically worked a midshift from about 10:00 a.m. to 7:00 p.m. or 8:00 p.m. about four days per week. His last day of work was May 28, 2006.

On May 27, 2006 Mr. Jefferson, assistant manager, gave the claimant a coaching regarding his attendance. The claimant had missed several days, including May 2, May 9, May 10, and May 13, 2006. The May 2 absence was due to illness; the other dates were for "other" reasons. The claimant advised Mr. Jefferson that he was working another job doing construction, and that he was having some difficulty balancing the two jobs.

On May 29, June 2, and June 3, 2006 the claimant was a no-call, no-show for work, and did not answer his phone when Mr. Jefferson attempted to contact him. As a result, the employer considered the claimant a voluntary quit under its three-day no-call, no-show job abandonment policy of which the claimant was on notice.

The claimant established an unemployment insurance benefit year effective June 4, 2006. His high wage quarter during his base period was the third quarter of 2005. He had no wages from Wal-Mart during that quarter.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The substantive issue in this case is whether the claimant is disqualified from receiving unemployment insurance benefits because he voluntarily quit employment without good cause attributable to the employer.

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 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the

individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

871 IAC 24.25 provides that, 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. However, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. The claimant has the burden to establish that he quit for a good cause attributable to the employer; the claimant has not satisfied this burden.

The claimant voluntarily quit employment without good cause attributable to the employer. The job, however, was part time, and the claimant has sufficient wages from other employers to qualify to receive unemployment insurance benefits. The employer's account will not be subject to charge for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated June 26, 2006 (reference 01), is modified in favor of the employer. The claimant is not disqualified and the employer's account is not subject to charge because the claimant voluntarily quit part-time employment without good cause attributable to the employer.

ld/pjs