

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

KATOSHA L CROW
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DES MOINES IA 50309

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

Appeal Number: 04A-UI-09564-SWT
OC: 08/08/04 R: 02
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 Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 27, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 30, 2004. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Ron Hilligaf participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a cashier from August 1, 2003 to August 2, 2003. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant received the following discipline regarding her

attendance in 2004. She received a verbal coaching on June 5, a written coaching on July 9, and a decision-making day on August 2.

The decision-making day was given because the claimant had accumulated eight absences and over 50 tardies during the last six-months of employment. The final absence was an absence without notice to the employer on July 31.

For the decision-making day, the claimant was suspended for August 2 with pay. She was told that she had to decide whether she wanted to return to work, and if she did, she was required to agree to a plan of action to remedy her attendance problems. The employer did not discharge the claimant. The employer had continuing work available for the claimant if she had returned to work. The claimant never returned to work and never contacted anyone in management again about her job. After three days, the employer considered the claimant to have terminated her employment. The claimant quit her employment after being reprimanded.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 8, 2004. The claimant filed for and received a total of \$396.00 in unemployment insurance benefits for the weeks between August 8 and August 21, 2004.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. The claimant was not discharged by the employer. The claimant never returned to work after her decision-making day even though work was available. She voluntarily quit employment.

871 IAC 24.25(28) 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:

(28) The claimant left after being reprimanded.

The claimant voluntarily quit employment without good cause attributable to the employer after being disciplined by the employer. Even if the claimant's employment was terminated by the employer it would be for work-connected misconduct based on the claimant's excessive unexcused absenteeism and tardiness.

The next issue in this case is whether the claimant was overpaid unemployment insurance 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$396.00 in benefits for the weeks between August 8 and August 21, 2004.

DECISION:

The unemployment insurance decision dated August 27, 2004, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$396.00 in unemployment insurance benefits, which must be repaid.

saw/kjf