

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

GABRIEL SHIRKEY
2401 BANK ST
KEOKUK IA 52632

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

Appeal Number: 05A-UI-07162-BT
OC: 06/12/05 R: 04
Claimant: Appellant (1)

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 Leaving

STATEMENT OF THE CASE:

Gabriel Shirkey (claimant) appealed an unemployment insurance decision dated July 1, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit work with Wal-Mart Stores, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2005. The claimant participated in the hearing. The employer participated through Diane Barton, Personnel Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time employee in the receiving department from February 9, 2000 through May 30, 2004. He was considered to have voluntarily quit his employment after he was a no-call/no-show for three consecutive days, which was a violation of the employer's work rules. The three days were May 28, 29 and 30. The claimant testified at the hearing that he believed he had been fired but he signed the employer's exit interview, which clearly stated that he quit his employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 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. 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 demonstrated his intent to quit and acted to carry it out by failing to call or report to work for three consecutive days ending May 30, 2004.

The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without giving notice to the employer in violation of company rule. 871 IAC 24.25(4). It is the claimant's burden to prove that the voluntary quit was for good cause, but he has not satisfied that burden. Iowa Code § 96.6-2. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated July 1, 2005, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/tjc