

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

JENNY J MCCLOSKEY
612 E 19TH ST
SPENCER IA 51301

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

Appeal Number: 04A-UI-08308-HT
OC: 07/04/04 R: 01
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 - Quit

STATEMENT OF THE CASE:

The claimant, Jenny McCloskey, filed an appeal from a decision dated July 29, 2004, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 24, 2004. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Store Manager Jan Coon.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jenny McCloskey was employed by Wal-Mart from March 10 until May 18, 2004. She was a full-time cook in the snack bar.

On May 18, 2004, the claimant submitted a written resignation to Store Manager Jan Coon. She stated she needed to get a job closer to home. The commuting distance was 30 miles and Ms. McCloskey's husband had to drive her to work due to night blindness and he was no longer able to do this. In addition, she indicated she had "medical problems" which were not caused or aggravated by the work and she could not continue as a grill cook.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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(30) 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:

- (30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

The claimant quit in order to find employment closer to home. The commute of 30 miles was the same as when she had accepted the employment but it was no longer feasible for her to work this far away from home. Under the provisions of the above Administrative Code Section, this is not good cause attributable to the employer, and the claimant is disqualified.

DECISION:

The representative's decision of July 29, 2004, reference 02, is affirmed. Jenny McCloskey is disqualified, and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/tjc