

**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**

**JOHN D COLE
3905 ROLLING GREEN
DES MOINES IA 50322**

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

**Appeal Number: 05A-UI-03096-RT
OC: 02-13-05 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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated March 15, 2005, reference 01, allowing unemployment insurance benefits to the claimant, John D. Cole. After due notice was issued, a telephone hearing was held on April 11, 2005, with the claimant participating. Angela Hansen, Assistant Manager at Store #581 in Marshalltown, Iowa where the claimant was employed, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full time cashier from October 26, 2004 until he voluntarily quit sometime in December of 2004. The claimant's attendance record is shown at Employer's Exhibit One and he was at least absent on December 16, 17, 18, and 19, 2004 for a heart condition. During this period of time, the claimant was in the hospital. The claimant got out of the hospital on December 23, 2004 but did not return to the employer to go back to work but rather moved to Des Moines, Iowa. The claimant has never returned to the employer and offered to go back to work. The reason the claimant did not was his heart condition causing his illnesses and the need to move to Des Moines to recover. The claimant also had other absences and tardies as shown at Employer's Exhibit One. The claimant's heart condition causing his illness and hospitalization was unrelated to his employment. Pursuant to his claim for unemployment insurance benefits filed effective February 13, 2005, the claimant has received unemployment insurance benefits in the amount of \$680.00 as follows: \$85.00 per week for eight weeks from benefit week ending February 19, 2005 to benefit week ending April 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Both parties seem to concede that the claimant left his employment voluntarily because of an illness or an injury. The employer's witness, Angela Hansen, Assistant Manager, credibly testified that the claimant was deemed to have voluntarily quit when he stopped showing up for work. The claimant testified that he "involuntarily" left his employment because of illness due to his heart condition, which is unrelated to his employment. The administrative law judge concludes that the claimant left his employment voluntarily and that he did so according to the employer's testimony effective December 20, 2004. The claimant testified that he left on

December 6, 2004 but this is not credible. The claimant said something about going on a leave of absence on December 4, 2004 but the employer has no such records and it appears that the claimant worked some after that period of time even though the claimant denies it. Records at Employer's Exhibit One show the claimant was tardy on December 5, 10, and 13, 2004. In any event, the administrative law judge concludes that the claimant effectively left his employment voluntarily on December 20, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his 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 his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The only reason given by the claimant for his quit, voluntary or involuntary, was a heart condition unrelated to his employment. The claimant also testified that he has never been officially released by his physician. The claimant also testified that he has never returned to the employer and offered to go back to work since he moved. Under the evidence here, until the claimant returns to his employer and certifies that he is recovered from his illness and offers to return to work and perform services and his regular work or comparable work is not available, the claimant is disqualified to receive unemployment insurance benefits. The administrative law judge would also note that leaving work voluntarily to move to a new location is also not good cause attributable to the employer. See 871 IAC 24.25(2). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he returns to the employer and demonstrates his recovery by certification by licensed a practicing physician and offers to return to work for the employer and no work is available or until or unless he requalifies to receive such unemployment insurance benefits.

There was an issue as to whether the claimant is able and available and earnestly and actively seeking work under Iowa Code section 96.4-3. This issue was not set out on the notice of appeal and the administrative law judge does not have jurisdiction to side that issue. The administrative law judge concludes that it is not now necessary to decide that issue because as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits. If such a decision is changed, an investigation and determination should be made as to whether the claimant is able, available and earnestly and actively seeking work because there is evidence that the claimant has not officially been released to return to work by his physician.

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 unemployment insurance benefits in the amount of \$680.00 since separating from the employer herein on or about December 20, 2004 and filing for such benefits effective February 13, 2005. The administrative law judge concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision dated March 15, 2005, reference 01, is reversed. The claimant, John B. Cole, is not entitled to receive unemployment insurance benefits, until or unless he demonstrates that he is recovered from his illness by certification by a licensed and practicing physician and offers to return to the employer to go back to work and no comparable work is available or he requalifies for such benefits, because he left his employment voluntarily for an illness unrelated to his employment. The claimant has been overpaid unemployment insurance benefits in the amount of \$680.00.

sc/pjs