

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

JEANNE L O'DAY  
PO BOX 511  
KEOKUK IA 52632

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

Appeal Number: 05A-UI-02867-DWT  
OC: 02/13/05 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart (claimant) appealed a representative's March 11, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2005. The claimant participated in the hearing. Betty Twaddle, the jewelry department manager, and Sandy Anderson, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 26, 2004. The claimant worked part-time, 20 to 25 hours a week, as a sales clerk in the jewelry department. The employer reviews an employee's attendance over a rolling six-month time period. When an employee has four unapproved absences in six months, the employer gives the employee a coaching.

The employer's records indicate the claimant had unapproved absences on April 26, September 11 and December 4. On December 6, 2004, the employer talked to the claimant about her attendance. The employer considered the claimant's absences excessive and told her she could not have anymore unapproved absences until March 2005.

On December 8, 2004, the claimant left work early. The claimant talked to a manager who gave her permission to leave work because she was in the process of moving. The claimant and her children had been living with her mother since October. The claimant's mother would not allow the claimant to live with her any longer.

The claimant did not report to work or notify the employer on December 9 that she was unable to work as scheduled. On December 11, 2004, the claimant notified the employer that she was unable to work as scheduled. Twaddle called the claimant when she did not work as scheduled on December 11. When Twaddle talked to the claimant, she indicated she would be at work her next scheduled day. The claimant reported to work either on December 12 or 14. She worked about an hour and then left work. The claimant was still trying to move, resolve childcare issues and enroll her children in a new school.

On December 16, 2004, the claimant asked the employer for a two-week leave of absence. The employer denied this request because the claimant had not worked long enough to be eligible for a leave of absence. The claimant did not return to work or call the employer again. On January 13, 2005, the employer received a letter from the claimant indicating she was sorry she had to quit. The claimant did not return to work because she had personal issues – moving to a new residence and child care issues – she had to address and resolve.

The claimant established a claim for unemployment insurance benefits during the week of February 13, 2005. She filed claims for the weeks ending February 19 through April 2, 2005. She received her maximum weekly benefit amount of \$61.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant voluntarily quit her employment when she failed to return to work or talk to the

employer after December 16, 2004. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant has quit for reasons that do not qualify her to receive benefits when she quits because of childcare issues and for compelling personal reasons. 871 IAC 24.25(17) and (20). The facts establish the claimant decided to she had to resolve some personal issues instead of continuing her employment. While the claimant had compelling personal reasons for quitting, her reasons do not qualify her to receive unemployment insurance benefits. As of February 13, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending February 19 through April 2, 2005. The claimant has been overpaid a total of \$427.00 in benefits she received for these weeks.

#### DECISION:

The representative's March 11, 2005 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of February 13, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 19 through April 2, 2005. The claimant has been overpaid and must repay \$427.00 in benefits she received for these weeks.

dlw/sc