

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DUSTIN WALKER

Claimant

APPEAL NO: 13A-UI-01929-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 01-06-13

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 7, 2013, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 15, 2013. The claimant participated in the hearing. The employer sent a fax stating it would not be participating in the hearing. Department's Exhibit D-1 was admitted into the record.

ISSUE:

The issues are whether the claimant's appeal is timely and whether he voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on February 7, 2013. The claimant received the decision February 13, 2013. He called the Department February 15, 2013, and was instructed on how to submit an appeal. He lives in the country and rather than driving to the nearest town to mail the appeal he waited and sent it with his father to fax February 19, 2013. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 17, 2013. That date fell on a Sunday and was followed by President's Day February 18, 2012. The appeal was not filed until February 19, 2013, which is after the date noticed on the disqualification decision. If the claimant had mailed the appeal to the Department, the administrative law judge would understand why the appeal was late because February 18, 2013, was a federal, but not state, holiday and that affected mail service. Because the claimant had his father fax the appeal, however, and has not provided a good cause reason for failing to fax it on time as fax machines were running February 18, 2013, the administrative law judge must conclude the claimant's appeal is not timely.

Had the administrative law judge found the appeal timely, however, and made a substantive decision on the claimant's separation from employment, the decision would have read as follows:

The claimant was employed as a part-time receiving clerk for Wal-Mart from September 30, 2009 to April 10, 2012. He started attending Vatterott College February 13, 2012. He went to school from 7:00 a.m. to at least 12:30 p.m. and then had lab work at the school until at least 2:00 p.m. He usually worked 4:00 p.m. to 1:00 a.m. The claimant did not believe he could commute 105 miles round trip to attend school, work those hours, study and get enough sleep to continue working. He asked the employer if it could accommodate his school schedule but it was unwilling or unable to do so. Consequently, the claimant submitted his two-week notice effective April 10, 2012, and voluntarily quit his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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(26) 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:

(26) The claimant left to go to school.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. He was working from 4:00 p.m. to 1:00 a.m. and did not believe that allowed him enough time to attend school, study and sleep. While the employer refused to work with him, and it would have been nice had they done so, the employer is not required to accommodate the claimant's work schedule. Consequently, the claimant's decision to quit his job so he could attend school does not constitute good cause attributable to the employer under the meaning of the law. Therefore, benefits are denied.

DECISION:

The claimant's appeal was not timely. Had it been timely, the administrative law judge would have decided: The February 7, 2013, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs