

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

HEATHER M WIEBESIEK  
2731 BLYBURG RD  
HOMER NE 68030

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

Appeal Number: 04A-UI-01296-S2T  
OC: 11/09/03 R: 12  
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 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's January 29, 2004 decision (reference 02) that concluded Heather Wiebesiek (claimant) was eligible to receive unemployment insurance benefits. A telephone hearing was scheduled to be held on February 26, 2004. Prior to the hearing the claimant requested that the hearing be postponed to a date after March 5, 2004. The request was granted and the hearing was rescheduled for March 17, 2004. Through human error the administrative law judge did not see that the hearing had been rescheduled and held a telephone hearing on February 26, 2004. The claimant did not participate. The employer was participated by Mark Eriksen, Assistant Store Manager.

Bruce Schultz observed the hearing. Shortly after the hearing the administrative law judge discovered her error and saw that hearing notices were mailed to the parties' last-known addresses of record, for a telephone hearing to be held on March 17, 2004. The claimant did not provide a telephone number where she could be reached for the March 17, 2004, hearing and, therefore, did not participate. In addition, the employer was not at the number he had provided and did not participate. The administrative law judge used the testimony and evidence provided on February 26, 2004 to make a decision in this case.

#### 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 hired on October 21, 2003 as a full-time employee. On or about October 15, 2003, the claimant asked for a reduction in her hours. On or about February 14, 2004, the claimant asked for a further reduction in her hours. She wanted to work on Sundays from 4:00 a.m. to 11:00 a.m. and Thursdays from 3:00 a.m. to 7:30 a.m. The claimant reduced her hours because she was working for another employer. In addition the claimant was absent frequently due to illness.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is not.

871 IAC 24.23(7) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant requested a reduction of her hours and the employer granted her request. The change in hours was initiated by the claimant. She is considered to be unavailable for work from October 15, 2003. The claimant is disqualified from receiving unemployment insurance benefits from October 15, 2003, due to her unavailability for work.

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 claimant has received benefits in the amount of \$1,381.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 29, 2004 decision (reference 02) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work from October 15, 2003. The claimant is overpaid benefits in the amount of \$1,381.00.

bas/b