

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

BROOKE L BOZORGZADEH
2251 PLEASANTVIEW DR APT B4
MARION IA 52302

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

Appeal Number: 04A-UI-04583-DWT
OC 01/25/04 R 03
Claimant: Appellant (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 are 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)

871 IAC 24.23(26) – Partially Unemployed

STATEMENT OF THE CASE:

Brooke L. Bozorgzadeh (claimant) appealed a representative's April 16, 2004 decision (reference 01) that concluded she was not eligible to receive benefits as of January 25, 2004 because she still worked for Wal-Mart Stores, Inc. (employer) on a part-time basis and was not considered partially unemployed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2004. The claimant participated in the hearing. Kelly Moore, a co-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:

As of January 25, 2004, is the claimant partially unemployed?

FINDINGS OF FACT:

The claimant started working for the employer in December 1999. The employer hired her as a part-time employee. When the employer hired the claimant, she was available to work Sunday from 9:00 a.m. to 5:30 p.m. and Wednesday, Thursday and Friday from 9:15 a.m. to 3:00 p.m. The claimant remains available to work these hours.

Prior to January 2004, the claimant worked an average of 24 to 26 hours a week. In January 2004, the employer asked the claimant if she was available to work any more hours. When the claimant indicated her availability was the same, the employer reduced the claimant's schedule. Since January 2004, the claimant has been working 5 to 12 hours a week. The employer reduced the number of hours the claimant worked because of the employer's business needs and the employer wanted to be fair to other cashiers.

The claimant established a claim for unemployment insurance benefits during the week of January 25, 2004. The claimant still works part-time for the employer.

REASONING AND CONCLUSIONS OF LAW:

When a claimant is still employed in a part-time job at the same hours and wages as she was hired and is not working a reduced workweek, the claimant is not considered partially unemployed. 871 IAC 24.23(26). The facts show that since January 2004 the claimant is working a reduced workweek. Prior to January 2004, the claimant worked an average of 24 to 26 hours a week. In January 2004, the employer cut the claimant's scheduled hours of work by about half. As a result for unemployment insurance purposes she is partially unemployed. As of January 25, 2004, the claimant is eligible to receive partial unemployment insurance benefits for any week in which she does not have excessive earnings and meets all other eligibility requirements.

DECISION:

The representative's April 16, 2004 decision (reference 01) is reversed. The claimant still works for the employer but her hours have been reduced by 50 percent. Since the claimant has not changed her availability to work, she is able to and available for work. The claimant is partially unemployed because she is working a reduced workweek. As of January 25, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf