

**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**

**JOSH L HAYLER
2555 OXFORD LN #5
CEDAR RAPIDS IA 52404**

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

**Appeal Number: 04A-UI-09546-CT
OC: 08/08/04 R: 03
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 Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated August 25, 2004, reference 01, which held that no disqualification would be imposed regarding Josh Hayler's separation from employment. After due notice was issued, a hearing was held by telephone on September 30, 2004. Mr. Hayler participated personally. The employer participated by Mike Seamster, District Manager. Exhibits One and Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Hayler began working for Wal-Mart on April 15, 1993. He was last employed full time as "Tire Lube Express" (TLE) manager, a position he held for the last three years of his employment. He was last employed in the employer's Cedar Rapids store #2716. On August 2, 2004, he met with his district manager regarding concerns voiced by associates working under Mr. Hayler. Because of these concerns, the decision was made to transfer him to another Wal-Mart to work as a TLE Manager. Mr. Hayler did not express any objection to the proposed transfer.

On August 5, the district manager advised Mr. Hayler by telephone that a position had been found for him in the Cedar Falls Wal-Mart. He would not have suffered any loss in pay or hours. Mr. Hayler was aware at the time that the job in Cedar Falls was approximately one hour away from his home in Cedar Rapids. He was asked to report to the Cedar Falls store that day. When told of the new location, Mr. Hayler only indicated that it was a pretty good store. He did not voice any objection to being transferred to Cedar Falls. Subsequent to the telephone call with the district manager, Mr. Hayler decided to resign rather than report to the Cedar Falls store. His resignation does not cite the transfer as the reason for quitting. He indicated he was leaving to pursue other opportunities.

Mr. Hayler was not told what would happen if he did not accept the transfer to Cedar Falls. If he had declined, the employer would have sought an assistant manager position for him in the Cedar Rapids store. An assistant manager position would not have reduced Mr. Hayler's pay or hours. Mr. Hayler never notified the employer that he would quit if forced to transfer to Cedar Falls.

Mr. Hayler has received a total of \$1,240.00 in job insurance benefits since filing his claim effective August 8, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Hayler was separated from employment for any disqualifying reason. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Hayler had the burden of proving that this quit was for good cause attributable to the employer. Iowa Code section 96.6(2). His resignation cited the pursuit of other opportunities as the reason for the decision to quit. Mr. Hayler contends in these proceedings that he quit because of the transfer. However, he never made the employer aware that he was unhappy with the decision to transfer him. He had two conversations with the district manager in which he could have voiced his displeasure at having to either commute to Cedar Falls or relocate there. Because he voiced no objection, the employer had every reason to believe that he would accept the transfer. Because the resignation did not cite the transfer as the reason for quitting, the employer had no reason to believe that the transfer played any part in the decision.

The employer's decision to transfer Mr. Hayler constituted a change in the terms and conditions of his employment. However, the administrative law judge believes he had an obligation to advise the employer of his dissatisfaction with the transfer and of his intent to quit if forced to transfer. Where an employer is not allowed a reasonable opportunity to correct the problem which is causing an individual to quit, the quit is not for good cause attributable to the employer.

See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Mr. Hayler acknowledged that he was not told what would happen if he did not accept the transfer to Cedar Falls. Therefore, he does not know what would have happened if he had told the employer he did not want to transfer because of the distance to the new job site.

After considering all of the evidence, the administrative law judge concludes that Mr. Hayler did not give the employer a fair opportunity to try to salvage the employment relationship. It is further concluded, therefore, that he did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied. Mr. Hayler has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated August 25, 2004, reference 01, is hereby reversed. Mr. Hayler voluntarily quit his employment with Wal-Mart for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Hayler has been overpaid \$1,240.00 in job insurance benefits.

cfc/tjc