

**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**

**JULIA RIALS
505 N STURTEVANT
DAVENPORT IA 52802**

**K MART CORP
c/o TALKS US EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-05708-HT
OC: 02/22/04 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, 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 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, K mart, filed an appeal from a decision dated May 10, 2004, reference 01. The decision allowed benefits to the claimant, Julia Rials. After due notice was issued, a hearing was held by telephone conference call on June 14, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Manager Gloria Longmyer and Store Manager Gary Bettenhausen.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Julie Rials was employed by K mart from July 6, 2002 until April 16, 2004. The claimant was hired to be a part-time associate but went to full time as a department manager in November 2002. Due to a reduction in force, she was demoted from department manager and made a part-time associate on January 1, 2004, and her wages were reduced by \$1.00 per hour.

The decisions on the reduction in force were based on performance. As a full-time employee the claimant accumulated verbal and written warnings for being absent and tardy to work. In addition, her level of performance was "adequate" but not at a level fully satisfactory to the employer. Therefore, she was notified by Human Resources Manager Gloria Longmyer she had been selected for reduction to a part-time sales associate. The claimant indicated she would "give it a try."

On April 16, 2004, Ms. Rials notified Assistant Manager Sheryl Malone she was quitting.

Julia Rials has received unemployment benefits since filing an additional claim with an effective date of April 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant quit almost four months after being reduced in hours, position and wages. She had agreed to the change when the employer first notified her of it and continued in this basis for several months. The record does not establish what, if anything, precipitated her decision to quit on April 16, 2004. The claimant has not met her burden of proof to establish she had good cause attributable to the employer for quitting after she acquiesced in the change of contract. She is disqualified.

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 unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 10, 2004, reference 01, is reversed. Julia Rials is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$715.00.

bgh/b