

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**THERESA M BETTINSON**  
Claimant

**WALMART INC**  
Employer

**APPEAL 24A-UI-02286-SN**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/08/23**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

**STATEMENT OF THE CASE:**

The claimant, Theresa M. Bettinson, filed an appeal from the December 12, 2023, (reference 06) unemployment insurance decision that denied benefits based upon her voluntary resignation. The parties were properly notified about the hearing. An in-person hearing at the IowaWORKS at 2508 4th Street in Sioux City, Iowa 51101 on March 18, 2024, at 11:00 a.m.

The claimant participated and testified. The employer participated through Front End Coach Jamaal Dean. The employer was represented by Thomas Durso, an unemployment insurance representative. Exhibits D1 and D2 were received into the record.

The employer's proposed exhibits were not accepted into evidence because they were not sent to the claimant to be compliant with Iowa Admin. Code r. 871-26.15.

**ISSUES:**

Whether the claimant's appeal is untimely? Whether the claimant was excused from meeting the appeal deadline due to circumstances beyond her control?

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a facility maintenance from October 24, 2023, until she was separated from employment on November 19, 2023, when she quit. The claimant's immediate supervisor was Front Desk Jamaal Dean.

At the time of her hire, Mr. Dean promised the claimant that she would receive full-time work in this role. He also promised that she would be able to work from 7:00 a.m. to 4:00 p.m. during the week. The claimant needed that schedule because she uses the bus to commute. Buses do

not run later in the day. The claimant made separate arrangements to get her to work on the weekends, which was to be infrequent.

The facility maintenance job description includes attempting to unclog toilets. Management has a practice that if the facility maintenance team member is unable to unclog the toilet, then management can call a third party team to do it. This practice was not well known by subordinates.

Early in her term of employment, the claimant told Mr. Dean that a toilet in the back was overflowing. Mr. Dean told the claimant to try to unclog the toilet with a plunger.

In the second week on the job, the claimant noticed she was being scheduled to work after 4:00 p.m. for the third week. This occurs due to the employer's scheduling software. Mr. Dean told the claimant that she could leave to get her bus, but this also reduced her hours. The claimant was only able to work 20 hours in the third week on the job. The claimant also complained about her assigned schedule to the human resources department three times.

On November 19, 2023, the claimant discovered overflowing toilets in both of the men's and women's bathrooms. The claimant panicked because standing water was coming up over her shoes. Worse still, no one in management was there to help her with the situation. The claimant spoke to Team Lead Maria Garcia. The claimant threw her vest down. She said, "Sorry, but I am going." The claimant then walked off the job before the end of her shift. Management called a company to auger out the pipes behind the walls of both bathrooms which was causing the back up.

The following section of the findings of facts displays information necessary to resolve the timeliness issue:

A disqualification decision was mailed to the claimant's address of record on December 12, 2023. The claimant did not receive the decision. (Exhibit D1) The claimant appealed on December 22, 2023. (Exhibit D2) The claimant filed this appeal in response to a billing statement she received in the mail. It did not instruct her how to appeal.

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of

proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). As a result, the claimant is excused from meeting the deadline on the decision.

The administrative law judge concludes claimant's separation from the employment was with good cause attributable to the employer. Benefits are granted, provided she is otherwise eligible for benefits.

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.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant had an intention to quit and carried out by dropping her vest in front of Ms. Garcia and walking off the job.

As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

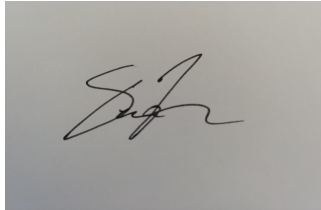
In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988). The claimant was not required to give notice of her intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The administrative law judge finds the claimant reasonably quit due to a change in the contract of hire. The combination of her hours being severely reduced or her having to commute through a costly tax ride is sufficient to meet her burden to show her resignation is attributable to the employer. This is especially so because the claimant reported these concerns to both Mr. Dean and the human resources department and no assurance of correction was given.

As to the back up that was the final straw, the administrative law judge finds the claimant was reasonably uncertain about what she was supposed to do about it. It may have seemed clear to Mr. Dean that management would just call a third party organization as was done, but the claimant had only been on the job for a few weeks. Taken together, the administrative law judge finds the claimant has met her burden. Benefits are granted, provided the claimant is otherwise eligible for benefits.

**DECISION:**

The December 12, 2023, (reference 06) unemployment insurance decision is REVERSED. The claimant quit on November 19, 2023 with good cause attributable to the employer. Benefits are granted, provided she is otherwise eligible for benefits.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is centered within a light gray rectangular box.

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Sean M. Nelson  
Administrative Law Judge II

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March 20, 2024  
Decision Dated and Mailed

SMN/jkb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.