

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KIMBERLY A CHANCELLOR**  
Claimant

**APPEAL NO. 09A-UI-15263-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 06/28/09**  
**Claimant: Appellant (1)**

Section 96.5(1) – Quit  
871 IAC 24.27(96) – Part-Time Employment  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant, Kimberly Chancellor, filed an appeal from a decision dated September 25, 2009, reference 04. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 12, 2009. The claimant participated on her own behalf and was represented by Ryan Richardson. The employer, Wal-Mart, participated by Vision Center Manager Deb Noble. Exhibit D-1 was admitted into the record.

**ISSUE:**

The issue is whether the appeal is timely and whether the claimant has sufficient earnings in her base period.

**FINDINGS OF FACT:**

A disqualification decision was mailed to the claimant's last-known address of record on September 25, 2009. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 5, 2009, which was an obvious error. In any event the claimant did not read that part of the decision and did not file an appeal until October 7, 2009, because she was not certain she wanted to file an appeal and hesitated for over a week after receiving the decision before deciding to file the appeal.

The claimant's separation from this employment was previously adjudicated in Appeal 09A-UI-11791-DT on September 2, 2009. That decision found she had quit her part-time work without good cause attributable to the employer and the wage credits earned with Wal-Mart would be removed from her base period. It further stated benefits would be allowed **"if the claimant is otherwise eligible."** (emphasis added). The decision remanded the issue of the claimant's weekly benefit amount to the UIS division for determination.

The decision in the present case was made finding that the claimant lacked sufficient earnings in her base period after the removal of wage credits from Wal-Mart. Ms. Chancellor acknowledged the amount of wages reported to the State by other employers was correct.

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

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant's appeal was not made until more than ten days after the date the decision was mailed. The administrative law judge shall accept the appeal only because of the error contained in the decision about the due date for the appeal.

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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant's wage credits from Wal-Mart were removed because she quit without good cause attributable to the employer. That decision was made and has become final. The remand was for the Agency to determine if she was still eligible. Eligibility includes whether the claimant has sufficient earnings in the base period to be monetarily eligible for benefits. After the removal of those wage credits she had insufficient earnings under the provisions of Iowa Code chapter 96.4(4) to be monetarily eligible for unemployment benefits.

**DECISION:**

The decision of the representative dated September 25, 2009, reference 04, is affirmed. The appeal in this case shall be accepted as timely. The decision of the representative remains in effect. The claimant is ineligible for unemployment benefits.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs