

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

DAWN M HEARNEY
1628 BEVER AVE SE
CEDAR RAPIDS IA 52403

WAL-MART STORES INC
C/O THE FRICK COMPANY
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-03825-S2T
OC: 09/05/04 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's March 31, 2005 decision (reference 03) that concluded Dawn Kearney (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2005. The claimant participated personally. The employer participated by Jenny Ressler, Personnel Manager.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant worked for the employer from November 29, 2004, until March 8, 2005. She

worked 11:30 a.m. to 8:00 p.m. as a full-time inventory customer service associate. The employer asked the claimant to work in the bakery on or about March 1, 2005, while another employee was absent. The hours were from 4:00 a.m. to 1:00 p.m. The claimant agreed to work the position if she could return to previous job should she not like the hours. The employer agreed. The claimant had babysitter problems from the time she took the job. For a week the claimant told the employer she could not work in the bakery anymore or she would have to quit. The employer ignored the claimant. On March 8, 2005, the employer told the claimant that he had filled her old position with a new employee. The claimant quit work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

871 IAC 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.

An employee must give prior notice to the employer before quitting due to a change in the contract of hire. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant quit work because the employer changed her hours worked. She gave the employer notice. A change in one's hours or shift is a substantial change in one's contract for hire. The employer substantially changed the claimant's contract for hire and, therefore, the separation was not voluntary. The claimant is qualified to receive unemployment insurance benefits provided she is otherwise eligible.

DECISION:

The representative's March 31, 2005 decision (reference 03) is affirmed. The claimant is qualified to receive unemployment insurance benefits provided she is otherwise eligible.

bas/pjs