

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

ERICA R COWLES
LOT 15
1717 – 35TH ST
FORT MADISON IA 52627

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

Appeal Number: 06A-UI-01630-DWT
OC: 12/11/05 R: 04
Claimant: Appellant (4/R)

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 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Erica R. Cowles (claimant) appealed a representative's January 18, 2006 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 28, 2006. The claimant properly responded to the hearing by providing her phone number to the Appeals Section prior to the hearing. The claimant was called, but the claimant was not available for the hearing. A recording indicated her machine turned was off. Debbie Kaiser, the personnel manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing late appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 14, 2005. The claimant worked as a part-time cashier. During a June 18, 2005 evaluation review, the employer informed the claimant her job was below the employer's expectations and she needed to work on her attendance. The claimant experienced health problems during this time. The claimant did not request any accommodations from the employer.

On June 30, 2005, the claimant told the employer she was unable to work any longer because of her health problems. The claimant's last actual day of work was June 24, 2005.

The claimant established a claim for unemployment insurance benefits during the week of December 11, 2005. On January 18, 2006 a representative's decision was mailed to the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits as of December 11, 2005.

The claimant did not receive the representative's decision. On February 9, 2006, the claimant was at her local office and filed an appeal from the January 18, 2006 decision. The claimant has wages credits in her base period from other base period employers.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code §96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record establishes the claimant did not have a reasonable opportunity to file a timely appeal because she did not receive the January 18, 2006 representative's decision.

The claimant established a legal excuse for failing to file a timely appeal. 871 IAC 24.35(2). Even though the claimant filed a late appeal, the Appeals section has jurisdiction to make a decision on the merits because the claimant has a legal excuse for filing a late appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence indicates the claimant voluntarily quit her employment on June 30, 2005. When a claimant quits, she has the burden to establish she quit with good use attributable to the employer. Iowa Code §96.6-2.

The evidence indicates the claimant had compelling personal reasons for quitting. The evidence does not, however, establish that the claimant quit her employment for reasons that constitute good cause for unemployment insurance purposes. When a claimant quits for reasons that do not constitute good cause, the employer's account is not subject to charge. Iowa Code §96.7-2(a)(2).

If the claimant had quit a full-time job, she would not be qualified to receive unemployment insurance benefits. When a claimant quits a part-time job even without good cause, but is monetarily eligible to receive benefits based on wage credits from other employers in her base period, the claimant is allowed to receive benefits even though she has not requalified by earning ten times her weekly benefit. 871 IAC 24.27. Therefore, as of December 11, 2005, the claimant is qualified to receive unemployment insurance benefits.

It does not appear the claimant has earned ten times her weekly benefit before she established her claim for unemployment insurance benefits. Therefore, wage credits she earned from the employer cannot be included to determine her monetary eligibility. This case is remanded to the Claims section to exclude the wage credits the claimant earned from the employer and determine the claimant's monetary eligibility and maximum weekly benefit amount based on the wage credits she earned from other base period employers.

DECISION:

The representative's January 18, 2006 decision (reference 03) is modified in the claimant's favor. First, the claimant established a legal excuse for filing a late appeal so the Appeals Section has legal jurisdiction. Next, the claimant voluntarily quit a part-time job for reasons that do not constitute good cause. Therefore, the employer's account will not be charged. The claimant, however, is eligible to receive unemployment insurance benefits as of December 11, 2005, provided she meets all other eligibility requirements. Even though the wage credits the claimant earned from the employer cannot be considered because the claimant has not earned requalifying wages, the claimant has wages from other base period employers in her base period. Finally, this case is remanded to the Claims Section to determine the claimant's monetarily eligible and maximum weekly benefits amount based on wages she earned in her base period that do not include the wage credits from the employer.

dlw/tjc