

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

WILLIAM L MCCOMBS
602 – 8TH AVE W
OSKALOOSA IA 52577

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

Appeal Number: 04A-UI-06363-S2T
OC: 05/16/04 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
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's May 28, 2004 decision (reference 01) that concluded William McCombs (claimant) voluntarily quit due to a change in the contract for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2004. The claimant participated personally. The employer participated by Tammy Harrison, Store Manager, and Mike Orndorff, Tire Lube Express 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 as a service manager from October 24, 2001, until May 12, 2004. From the time he was hired until April 2004, the claimant worked nights. In April 2004, the claimant started alternating working two weeks of days and two weeks until 10:00 p.m. At the end of his employment the claimant had made arrangements to only work days.

On May 2, 2004, the claimant allowed a former employee to work on his own car in the employer's facility. The employer discovered the claimant's actions on May 3, 2004, and investigated. On May 12, 2004, the employer issued the claimant a decision-making day and demoted the claimant from service manager to inventory control team member. The employer offered the claimant the position and the hours would be from 11:00 a.m. to 8:00 p.m. The claimant seemed to want to accept the position.

On May 14, 2004, the claimant telephoned the employer and said he did not want the new position because of the hours. The employer asked the claimant to come in to discuss the matter. The claimant refused and quit work. Continuing work was available for the claimant during days had he not 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 he did.

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 his hours. A change in one's hours or shift can be a substantial change in one's contract for hire. The employer did not substantially change the claimant's hours. The claimant had only recently been working similar hours. He used to work until 10:00 p.m. The employer was offering work until 8:00 p.m. In addition, the claimant did not give the employer proper notice that he would quit work due to a change in his contract for hire. Due to the claimant's failure to give the employer notice, there cannot be a finding that he left work due to a change in the contract for hire. Therefore the claimant is not eligible to receive unemployment insurance benefits.

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 benefits in the amount of \$1,425.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's May 28, 2004 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,425.00.

bas/b