

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

MARK T CLARK
5309 HWY 75 N LOT 83
SIOUX CITY IA 51108

WAL-MART STORES INC
c/o THE FRICK COMPANY-UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11942-BT
OC: 10/03/04 R: 01
Claimant: Respondent (2/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 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated October 26, 2004, reference 02, which held that Mark Clark (claimant) was eligible for unemployment insurance benefits. Due notice was issued scheduling the matter for a telephone hearing to be held December 1, 2004. Because a decision could be made based on the record as it stood, a hearing was deemed unnecessary.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on October 6, 2004. The employer filed its protest on October 18, 2004, which is the next work day following

October 16, 2004. The employer did not waive formal notice to the separation issues since there are issues regarding the separation that have not yet been investigated or adjudicated at the claims level.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law. The issue of the separation is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The October 26, 2004, reference 02, decision is reversed. The employer has filed a timely protest. The issues of the claimant's separation from the employer are remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

sdb/tjc