

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

EDWARD M JOHNSTON  
1815 SW 1<sup>ST</sup>  
DES MOINES IA 50315

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

Appeal Number: 05A-UI-04948-BT  
OC: 04/10/05 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated April 29, 2005, reference 01, which held that Edward Johnston (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2005. The claimant participated in the hearing. The employer participated through Randy Richman, Assistant Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time sales associate from September 11, 2004 through May 6, 2005. He was hired on a part-time basis and his contract of hire never changed until he quit his employment to stay home and care for his children since his wife got a job.

The claimant filed a claim for unemployment insurance benefits effective April 10, 2005 and has received benefits after the separation from employment in the amount of \$1,374.00.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the claimant is qualified for benefits from April 10, 2005 through April 30, 2005 which is based on whether he was employed for the same hours and wages as contemplated in the original contract of hire.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time sales associate for Wal-Mart Stores and there had been no separation from that employment until May 6, 2005 when he voluntarily quit. Since he was working for this employer at the same hours and wages as contemplated in his original contract of hire, he is disqualified from receiving benefits from this employer through April 30, 2005. However, the claimant is also separated from his full-time employer and this case is remanded for a determination on whether the claimant is eligible for benefits from that separation, for the three-week period ending April 30, 2005.

The next issue to be decided is whether the claimant's separation from employment as of May 6, 2005 qualifies him to receive unemployment insurance benefits. He quit his

employment because his wife got a job and he had to stay home to care for his children. The law presumes it is a quit without good cause attributable to the employer when an employee leaves because of lack of childcare. 871 IAC 24.25(17). It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied as of May 7, 2005.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The unemployment insurance decision dated April 29, 2005, reference 01, is reversed. The claimant is disqualified from receiving benefits from this employer and the employer's account is not subject to charge. This case is remanded for an investigation and determination on whether the claimant is eligible for benefits for the three-week period ending April 30, 2005, based on his separation from his previous full-time employment. He is disqualified from receiving any benefits as of May 7, 2005.

sdb/pjs