

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

GAYLENE E MEEVES  
2309 JACKSON ST  
SIOUX CITY IA 51104

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

Appeal Number: 04A-UI-01881-B4T  
OC: 01/11/04 R: 01  
Claimant: Respondent (2)

**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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 10, 2004, reference 01 that held, in effect, that Gaylene A. Meeves was discharged from her employment with Wal-Mart Stores, Inc., on January 9, 2004 for no disqualifiable reason. Unemployment insurance benefits were allowed. A telephone conference hearing was scheduled and held on March 8, 2004 pursuant to due notice. Gaylene A. Meeves did not respond to the notice of hearing mailed to her by the Appeals Section by providing a telephone

number of where she could be contacted. The claimant did not participate in the hearing held. Brian Hodgins, Assistant Manager, at Sioux City, Iowa, participated on behalf of Wal-Mart Stores, Inc. Cindy Schuur, Training Coordinator participated as a witness on behalf of the employer.

Official notice was taken of the unemployment insurance decision dated December 12, 2004, reference 01, together with the pages attached thereto (5 pages in all).

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Gaylene A. Meeves was employed as a cashier at a Wal-Mart Stores, Inc. facility in Sioux City, Iowa on June 10, 2003. The claimant acknowledged receipt of the employer handbook on June 10, 2003.

During the tenure of the claimant's employment, she was never warned that her job was in jeopardy in writing on any occasion. The claimant, however, was off work due to illness and operations that took place during the year 2003. The claimant was last authorized to return to work on December 19, 2003. The claimant was absent on a no-call/no-show basis on December 27, 2003; December 29, 2003; December 30, 2003; and January 1, 2004. The claimant was also absent on January 2 and 3, on a no-call/no-show basis and has not returned to the employer following said date January 3, 2004.

The record indicates that the claimant was off work due to illness on several periods of time. The claimant was last authorized to return to work without restriction on December 19, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.25(27) provides:

(27) The claimant left rather than perform the assigned work as instructed.

871 IAC 24.25(35) provides:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The evidence in the record establishes that the claimant left her employment rather than perform the assigned work that was made available to her. In addition, the claimant left because of illness or injury, which was not established to be caused or aggravated by the employment. The claimant failed to obtain the advice of a licensed and practicing physician prior to leaving her employment and did not notify the employer or return to the employer and offer services upon recovery and certification for work by the physician. The claimant failed to participate and established that she had recovered from the medical problems she was undergoing and did not provide adequate information relating to why she was absent on a no-call/no-show basis on so many occasions and had failed to return to the employer.

Leaving one's employment under such circumstances as evidenced by the record constitutes justifiable reason for a discharge for excessive unexcused absenteeism and tardiness. Primarily, however, the claimant voluntarily left her employment with Wal-Mart Stores, Inc. on January 9, 2004 without good cause attributable to the employer within the intent and meaning of the foregoing sections of the Iowa Code and Iowa Administrative Code.

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 evidence in the record establishes that the claimant has received benefits in the amount of \$426.00 to which she is not entitled by reason of the instant decision. Gaylene A. Meeves is therefore overpaid benefits in said amount within the intent and meaning of Iowa Code Section 96.3-7.

#### DECISION:

The unemployment insurance decision dated February 10, 2004, reference 01, is reversed. Gaylene A. Meeves voluntarily left her employment with Wal-Mart Stores, Inc. on January 9, 2004 without good cause attributable to the employer and benefits are denied until such time as she has requalified under the provisions of the Iowa Employment Security Law. Gaylene A. Meeves is overpaid benefits in the amount of \$426.00.

kjf/b