

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

BRUCE W DANIELSEN
1601 LYNX AVE #6
WEBSTER CITY IA 50595

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

Appeal Number: 04A-UI-09183-CT
OC: 07/11/04 R: 01
Claimant: Appellant (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

STATEMENT OF THE CASE:

Bruce Danielsen filed an appeal from a representative's decision dated August 16, 2004, reference 02, which denied benefits based on his separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on September 14, 2004. Mr. Danielsen participated personally. The employer participated by Jon Lempiainen, Co-Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Danielsen began working for Wal-Mart on

September 11, 2001. He worked full time, primarily as an unloader. He appeared in court in Humboldt County on a criminal matter on June 9, 2004. At that time, he was arrested pursuant to a bench warrant issued by Webster County due to his failure to appear for a sentencing in October of 2003. He was incarcerated in Wright County as of June 10 due to lack of space in Webster County's jail. He was next scheduled to work on June 11 and had his roommate notify the employer of his situation. On June 11, Mr. Danielsen wrote a letter to the employer explaining his circumstances.

Mr. Danielsen remained in Wright County's jail until June 28 when he was transferred to Webster County's jail, where he remained until July 4, 2004. He was on work-release effective June 18 but the distance from Wright County to his job in Webster County was prohibitive. On the afternoon of June 28, he contacted Wal-Mart and was advised that he no longer had employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Danielsen was separated from employment for any disqualifying reason. An individual who leaves employment because of incarceration is presumed to have quit without good cause attributable to the employer. See 871 IAC 24.25(16). Under such circumstances, benefits are denied pursuant to Iowa Code Section 96.5(1).

Even if the administrative law judge were to conclude that Mr. Danielsen was discharged, he would still be disqualified from receiving benefits based on his excessive unexcused absenteeism. Although he notified the employer of his intended absences, the absences were not for reasonable grounds. Absences due to personal matters such as incarceration are not considered excused, especially if the individual has some culpability for the incarceration. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Inasmuch as Mr. Danielsen was in jail for not appearing at a sentencing, he was at fault with respect to the absences. Therefore, even if it were concluded that Wal-Mart discharged him, he would not be entitled to job insurance benefits pursuant to the provisions of Iowa Code Section 96.5(2)a.

DECISION:

The representative's decision dated August 16, 2004, reference 02, is hereby affirmed. Mr. Danielsen quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/tjc