

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

TAMI J MCBRIDE
375 THIRD AVE
FERGUSON IA 50078

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

Appeal Number: 04A-UI-01297-S2T
OC: 01/04/04 R: 02
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, 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 January 30, 2004 decision (reference 01) that concluded Tami McBride (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2004. The claimant participated personally. The employer participated by Richard McConnell, 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 hired on April 8, 2003, as a full-time overnight stocker. The claimant received a copy of the employer's handbook and signed for its receipt on April 30, 2003. The employer's handbook has a policy which states that an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer.

The claimant suffered a nonwork-related ankle injury. She was absent from work for three weeks. She notified the employer she would be absent on only five days of the three weeks she was absent. The claimant did not appear for work or notify the employer of her absence on September 17, 18, 19 and 20, 2003. The claimant understood that she should have notified the employer each day she was absent. The claimant was considered to have quit on September 20, 2003, for failing to appear for work without notice for three days.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(4) provides:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work for four days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on her absence from work for three days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

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 \$423.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 30, 2004 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$423.00.

bas/d