

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

ALEXIS H OLSEN
1015 1/2 ARLINGTON
DAVENPORT IA 52803

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

Appeal Number: 04A-UI-08527-RT
OC: 07-11-04 R: 04
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 Quitting
Section 96.3-7 – Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated July 29, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Alexis H. Olsen. After due notice was issued, a telephone hearing was held on August 30, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in notice of appeal. Michael Uitermarkt, Co-Manager, participated in the hearing for the employer. The administrative law judge takes

official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time sales clerk from September 12, 2003 until she voluntarily quit on July 3, 2004. The claimant was absent from work on July 1, 2, 3, and 4, 2004 without notifying the employer. The employer has a policy that after three days of consecutive absences without notifying the employer, the absences are considered job abandonment and a voluntary quit. In fact, the claimant never returned to the employer and offered to go back to work. The employer had attempted to work with the claimant in the past. The claimant was pregnant and after giving birth, the employer gave the claimant a leave of absence in order to find childcare. When the claimant found childcare, she returned to work. Work would have been available for the claimant had she shown up for work as expected on and after July 1, 2004 or notified the employer of a reason why she did not. The claimant never expressed any concerns to the employer's witness, Michael Uitermarkt, Co-Manager, about her working conditions nor did she do so to anyone else that Mr. Uitermarkt heard about. The claimant also never indicated or announced an intention to quit to Mr. Uitermarkt if any of her concerns were not addressed by the employer nor did she to anyone else that Mr. Uitermarkt heard about. Although the claimant filed for unemployment insurance benefits effective July 11, 2004, records show that the claimant has filed no weekly claims and has received no unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from the employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not because she has received no such benefits.

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.

871 IAC 24.25 (4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

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

The first issue to be resolved is the character of the separation. The claimant seems to maintain that she was discharged. The employer's witness, Michael Uitermarkt, Co-Manager, credibly testified that the claimant was absent for more than three days in a row, beginning July 1, 2004, without notifying the employer. Mr. Uitermarkt also credibly testified that the employer has a policy that after three consecutive absences without notifying the employer, that the absences are treated as job abandonment and a voluntary quit. Here, the claimant had more than three but the third one was on July 3, 2004. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on July 3, 2004 when she was absent as a no-call/no-show for three days. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for her quit. The evidence establishes that the claimant simply quit coming to work without notifying the employer and this is not good cause attributable to the employer. There is no evidence that the claimant ever expressed any concerns to the employer about her working conditions or that she ever indicated or announced an intention to quit if any of her concerns were not addressed by the employer. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on or about July 3, 2004 and filing for such benefits effective July 11, 2004. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits.

DECISION:

The representative's decision of July 29, 2004, reference 01, is reversed. The claimant, Alexis H. Olsen, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits.

pjs/kjf