

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

LESTER B JOHNSON
418 CARTER AVE
OTTUMWA IA 52501

K MART CORPORATION
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03075-DT
OC: 02/08/04 R: 03
Claimant: Appellant (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 Leaving - Layoff

STATEMENT OF THE CASE:

Lester B. Johnson (claimant) appealed a representative's March 9, 2004 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from K Mart Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2004. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by calling the Appeals Section on March 31, 2004. The representative indicated that Sue Meyers would be available at the scheduled time for the hearing at telephone number 641-682-8101. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. Meyers was not available. Therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on or about February 15, 1997. He worked part-time (20 hours per week) as maintenance worker at the employer's Ottumwa, Iowa store. His regular work schedule was from 6:00 a.m. to 10:00 a.m. Monday through Friday. The last day he worked was on or about February 9, 2004. At that time, the schedule showed him only scheduled for work the one Monday morning for four hours and no hours for the rest of the two-week scheduled period. He had discussions with the store manager, Ms. Meyers, who indicated there were no more hours currently available for the claimant. The claimant told Ms. Meyers that he remained available and that she should call him when there was work for him. He repeated this offer to the employer on various occasions after February 9, most recently April 9, at which time Ms. Meyers responded that it was good to know and that she would bear it in mind. The claimant did not make any choice to be off work or be unscheduled for work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant did not indicate that he wished to be taken off the schedule; rather, he remained willing and available for work, but no more hours were provided to him. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The representative's March 9, 2004 decision (reference 03) is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

ld/kjf