

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

LEILA S STEWART
255 N 29TH ST
COUNCIL BLUFFS IA 51501

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

Appeal Number: 05A-UI-01463-HT
OC: 01/02/05 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, 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 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated January 31, 2005, reference 02. The decision allowed benefits to the claimant, Leila Stewart. After due notice was issued a hearing was held by telephone conference call on February 28, 2005. The claimant participated on her own behalf. The employer participated by Co-Manager Andy Eckstrom.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Leila Stewart was employed by Wal-Mart from

August 12, 2004 until January 6, 2005. She was a part-time cashier. At the time of hire, she received a copy of the employee handbook which sets out the employer's work rules. Any employee who is going to be absent must notify a member of management within four hours of the start of the shift. The handbook further states three consecutive no-call/no-shows will be considered a voluntary quit.

Ms. Stewart was scheduled to work December 30, 31, 2004 and January 1, 2005. She was no-call/no-show to work for each of those shift. The reason for her absences was due to illness and she did not call in because her live-in boyfriend had ripped the phone out of the wall during a fight the afternoon of December 30, 2004. Ms. Stewart's car was in the shop since December 28, 2004, but she had not made any arrangements for anyone to come and take her to work for her shift on December 30, 2004, which was scheduled for 8:00 p.m. If she had, then that person could either have taken her to a phone or called in on her behalf.

She returned to work on January 5, 2005, at 5:00 p.m., by which time her immediate supervisor, the department supervisor and the co-manager had already left. It was the next day when she reported for work that she was notified by Co-Manager Andy Eckstrom and Darlene, her supervisor, that she was considered a voluntary quit for being no-call/no-show to work for three consecutive days.

Leila Stewart has received unemployment benefits since filing a claim with an effective date of January 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant acknowledged being no-call/no-show to work for three consecutive days. Under the employer's policy, this is considered a voluntary quit. Iowa law supports this under the provisions of the above Administrative Code section. The claimant is disqualified.

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 unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 31, 2005, reference 02, is reversed. Leila Stewart is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,176.00.

bgh/sc