

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

RUTH A MITCHELL
458 W 3RD
PO BOX 269
DALLAS CITY IL 62330

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

Appeal Number: 04A-UI-03257-DWT
OC 02/15/04 R 12
Claimant: Respondent (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 are 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:

Wal-Mart Stores, Inc. (employer) appealed a representative's March 12, 2004 decision (reference 01) that concluded Ruth A. Mitchell (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had voluntarily quit her employment for reasons that qualify her to receive benefits. 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. Chad Sloat, a co-manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2000. For the last 18 months of her employment, the claimant was the head customer service manager. Her job responsibilities included training and disciplining all front-end cashiers. As the head customer service manager, the claimant earned \$9.36 per hour. The claimant worked 8:00 a.m. to 5:00 p.m., four days a week. On Tuesdays she worked 1:00 p.m. to 10:00 p.m.

During the claimant's employment, the employer gave her several warnings concerning problems with her job performance. In September 2003, the employer gave the claimant her final written warning on a decision day when she failed to complete employee evaluations on time. The claimant understood her job was in jeopardy after she received this warning.

The employer's policy informs employees that the employer considers an employee to exhibit an attendance problem if within a six-month time frame the employee accumulates three attendance points. An employee does not receive an attendance point for being late until the employee has been late for work three times. After the claimant was late for work on February 10, 2004, she had accumulated three attendance points during the last six months of her employment. In February, neither the claimant nor a cashier made a point of making sure the cashier completed some mandatory computer training by a specified deadline. On a day the claimant did not work, another person noticed the cashier had not taken the necessary test and made sure the employee completed the required test before the deadline.

On February 12, 2004, the employer told the claimant that effectively immediately she would be demoted because she had almost allowed a cashier to miss a deadline in completing some mandatory computer training. Instead of working as the head customer service manager, the employer demoted her to work as a front-line cashier. As a front-line cashier, claimant's hourly wage would be reduced to \$8.58 per hour and she would be required to work varying shifts. On February 13, 2004, the claimant quit her employment because the employer had demoted her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause. Iowa Code §96.5-1. The claimant voluntarily quit her employment on February 13, 2004. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant has voluntarily quit with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The claimant quit because the employer demoted her from working as the head customer service manager to a front-end cashier. In addition to changing her job duties, the employer changed her hours of work and reduced her hourly wage from \$9.36 to \$8.58. The employer substantially changed the claimant's employment contract on September 12.

The employer asserted the claimant was demoted because of on-going performance related problems. Even though the employer was not satisfied with the claimant's performance, the

employer acknowledged the current incidents that ultimately led to the claimant's demotion were not so severe that the employer discharged the claimant. The facts do not indicate the claimant intentionally or substantially disregarded the standard of behavior the employer had a right to expect from her. The claimant did not commit work-connected misconduct. 871 IAC 24.32(1)(a).

The employer presented business reasons for demoting the claimant. Even though the employer's reasons were compelling, the employer still substantially changed the employment contract. As a result, the claimant quit her employment for reasons that qualify her to receive unemployment insurance benefits as of February 15, 2004.

DECISION:

The representative's March 12, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of February 15, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b