

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

EVAH L COMSTOCK  
252 22<sup>ND</sup> PL  
CLINTON IA 52732

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

Appeal Number: 04A-UI-05561-AT  
OC: 04/18/04 R: 04  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Evah L. Comstock filed a timely appeal from an unemployment insurance decision dated May 6, 2004, reference 01, which denied benefits to her upon a finding that she could not be considered to be an unemployed individual. After due notice was issued, a telephone hearing was held on June 3, 2004 with Ms. Comstock participating. Store Manager Tom Meyer participated for the employer.

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: Evah L. Comstock has been employed by Wal-Mart

Stores, Inc., since July 2003. On February 26, 2004, she was promoted to full-time customer service manager. As such, she works 40 hours per week earning \$6.89 per hour. This is less than her weekly benefit amount which was computed on higher wages paid to her by a prior employer.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Comstock is eligible for unemployment insurance benefits despite working 40 hours per week since her present wages are lower than her weekly benefit amount for unemployment insurance purposes. She is not.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The term unemployment is defined in Iowa Code Section 96.19-38. An individual is totally unemployed in any week in which the individual earns no wages and performs no services for an employer. Partial unemployment is defined as both working less than the regular full-time week and earning less than the individual's weekly benefit amount plus \$15.00. Ms. Comstock does not meet the definition of being partially unemployed. Although her wages are less than the sum of her weekly benefit amount plus \$15.00 she is continuing to work her full-time week. Under these circumstances, benefits must be denied.

#### DECISION:

The unemployment insurance decision dated May 6, 2004, reference 01, is affirmed. The claimant is not eligible for unemployment insurance benefits.

kjf/b