

employer. Dee Leaders, Assistant Manager, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. Employer's Exhibit One was admitted into evidence. 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, including Employer's Exhibit One, the administrative law judge finds: The claimant was, at all material times hereto, and still is, employed by the employer since April of 2002. The claimant was initially employed by the employer in its store in Sioux City, Iowa. However, at the claimant's request, the claimant transferred to the employer's store in Bellevue, Nebraska, in January of 2005. At that time and at all material times hereto, the claimant was a part-time cashier for the employer until she became full-time on September 9, 2005. The employer never changed the claimant's hours or pay or employment on its own. On February 2, 2005, the claimant requested a change in her hours because she took a full-time job at Harrah's as shown at Employer's Exhibit One. On April 2, 2005, the claimant requested another change in her hours because of her full-time job at Harrah's also as shown at Employer's Exhibit One. On June 5, 2005, the claimant again requested a change in hours due to her husband's heart surgery again as shown at Employer's Exhibit One. Finally, on September 9, 2005, the claimant requested full-time hours again as shown at Employer's Exhibit One. All the claimant's requests including the request for full-time hours were granted by the employer. Other than the claimant's requested changes, the employer never changed the claimant's employment or hours or pay on its own. This appeal is based upon a combined wage claim with Nebraska as the transferee state. The administrative law judge has no jurisdiction to determine whether the claimant is entitled to benefits because that is up to the state of Nebraska. The only issue before the administrative law judge is whether the employer should be relieved of any charges for unemployment insurance benefits to which the claimant is entitled.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is receiving the same employment from the employer when she applied for unemployment insurance benefits as she did during her base period and therefore the employer would not be charged for any unemployment insurance benefits which the claimant is entitled. The administrative law judge concludes that the claimant was receiving, or could have received, the same employment from the employer that she had always had during her base period and, as a consequence, the employer's account should not be charged for any unemployment insurance benefits to which the claimant is entitled and the employer's account should be relieved of any such charges.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is

receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the employer has the burden of proof to demonstrate by a preponderance of the evidence that the claimant was receiving, or could have received, the same employment from the employer when she filed for benefits as she was receiving prior to that time and during her base period. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that at all material times hereto, the claimant was receiving the same employment as she did during her base period or prior to the filing of her claim for benefits. The evidence establishes that the claimant, at all material times hereto until September 9, 2005, was a part-time employee. She never separated from her employment although she did transfer in January of 2004 from the employer's store in Sioux City, Iowa, to the employer's store in Bellevue, Nebraska. Nevertheless, the claimant's hours were always part time. On February 2, 2005, April 2, 2005, and June 5, 2005, the claimant requested a change in hours primarily involving reduction in hours first because of her full-time job and then later because of her husband's heart surgery. The claimant's requests are shown at Employer's Exhibit One. The employer complied with each of the claimant's requests. However, the same hours and employment were available to the claimant if she had wished. Finally, the claimant requested full-time hours on September 9, 2005 also as shown at Employer's Exhibit One and this too was granted by the employer. Accordingly, the administrative law judge concludes that, at all material times hereto, the claimant was receiving from the employer, or could have received from the employer, the same employment that she had during her base period. Therefore, the administrative law judge concludes that any unemployment insurance benefits to which the claimant is entitled shall not be charged against the account of the employer herein and the account of the employer herein shall be relieved of any such charges.

DECISION:

The representative's decision of September 16, 2005, reference 05, is reversed. The employer, Wal-Mart Stores, Inc., should not be charged for any unemployment insurance benefits to which the claimant is entitled and the employer's account should be relieved of any such charges, because the claimant, at all material times hereto, was receiving the same employment from the employer as she did during her base period and prior to filing for benefits.

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