

**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**

**KYLA J WILSON
513 MAXWELL
MAXWELL IA 50161**

**KOHL'S DEPARTMENT STORES INC
c/o JON-JAY ASSOCIATES
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COLUMBUS OH 43218-2523**

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**Appeal Number: 06A-UI-01977-AT
OC: 08-21-05 R: 02
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 Quit
871 IAC 24.27 – Voluntary Quit From Part-Time Employment

STATEMENT OF THE CASE:

Kyla J. Wilson filed a timely appeal from an unemployment insurance decision dated February 9, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held February 27, 2006. Ms. Wilson did not participate, but Steve Hamilton, Attorney at Law, appeared on her behalf. Personnel and operations manager Mike McConnell participated for the employer, Kohl's Department Stores, Inc. Heather Konig was present but was not called to testify.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Kyla J. Wilson worked as a part-time overnight associate for Kohl's Department Stores, Inc., from November 7, 2005, until December 28, 2005. Personnel and operations manager Mike McConnell met with the overnight staff on December 28, 2005, to let them know that they were not meeting the employer's productivity expectations. At the end, he told those who felt they could not meet the expectations that they were free to leave. Ms. Wilson was among several associates who left at that time. Further work was available had she not left.

Ms. Wilson established a benefit year on August 21, 2005. Wages from Kohl's Department Stores were not used in computing her present weekly and maximum benefit amounts.

REASONING AND CONCLUSIONS OF LAW:

The question here concerns the unemployment insurance consequences of Ms. Wilson's separation from employment on December 28, 2005. For the reasons which follow, the administrative law judge concludes that Ms. Wilson remains presently eligible for unemployment insurance benefits but that Kohl's Department Stores shall not be liable for benefits paid to Ms. Wilson in this or a subsequent benefit year.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. The evidence establishes that Ms. Wilson chose to leave employment rather than to perform the work as instructed by the employer. Since further work was available to her, the separation is considered a quit without good cause attributable to the employer.

If this had been full time employment, benefits would have been withheld pursuant to the provisions of Iowa Code section 96.5-1. Another principle of law applies, however, in the case of a voluntary quit from part-time employment. A provision of the Iowa Administrative Code, 871 IAC 24.27, provides that an individual who resigns from part-time employment without cause attributable to the employer is still eligible to receive unemployment insurance benefits if the individual has sufficient wage credits from other employers. Since Ms. Wilson established her benefit year in August 2005 before accepting employment at Kohl's, she has established sufficient wage credits to receive unemployment insurance benefits. She may continue to do so. On the other hand, the rule provides that before Ms. Wilson may use the wages from Kohl's for computing any future unemployment insurance benefits, she first must requalify by earning ten times her weekly benefit amount in wages for insured work from subsequent employers. Since the separation from Kohl's was without good cause attributable to the employer, it is relieved of charges.

DECISION:

The unemployment insurance decision dated February 9, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. She may not use wages from this employment in computing future unemployment insurance benefits until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount. This employer shall not be charged with benefits paid to Ms. Wilson.

kkf/kjw