

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

DOUGLAS W BOUCHEY
2480 SPRUCE WOOD DR
DUBUQUE IA 52002-2304

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

Appeal Number: 04A-UI-00458-HT
OC: 11/30/03 R: 04
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 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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated January 9, 2004, reference 01. The decision allowed benefits to the claimant, Douglas Bouchee. After due notice was issued a hearing was held by telephone conference call on February 5, 2004. The claimant participated on his own behalf. The employer participated by Pharmacy District Manager Travis Tubbs.

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: Douglas Bouchey was employed by Wal-Mart from September 3, 2002 until November 25, 2003. He was a part-time relief pharmacist.

The claimant had been working for Union Pharmacy, which was shut down by the Iowa Board of Pharmacy in the summer of 2003. In late November 2003, charges were filed against the claimant personally by the same board. He notified Pharmacy District Manager Travis Tubbs of the charges, who then consulted with the corporate office. The decision was made by Jason Reiser, Director of Professional Services, to suspend the claimant until the issue of the charges was resolved.

Mr. Bouchey was notified of the suspension by Mr. Tubbs on November 25, 2003. On December 10, 2003, he accepted a full-time position at another pharmacy in the state of Michigan. The charges against him in Iowa have not been resolved.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer suspended the claimant indefinitely based on charges against him by the pharmacy board in relation to his employment at another company. Wal-Mart has not established the claimant is guilty of substantial, job-related misconduct in relation to his duties as a pharmacist with that company. Disqualification may not be imposed.

DECISION:

The representative's decision of January 9, 2004, reference 01, is affirmed. Douglas Bouchey is qualified for benefits provided he is otherwise eligible.

bgh/s