

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

BRYAN A LEWIS  
1000 ADVENTURELAND #612  
ALTOONA IA 50009-2265

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

Appeal Number: 06A-UI-00735-CT  
OC: 12/18/05 R: 02  
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, 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 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 10, 2006, reference 01, which held that no disqualification would be imposed regarding Bryan Lewis' separation from employment. After due notice was issued, a hearing was held by telephone on February 6, 2006. Mr. Lewis participated personally. The employer participated by Tammy Harrison, Store Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Lewis was employed by Wal-Mart from

February 2, 2002 until November 17, 2005. He was last employed full time as an assistant manager. He was discharged after he failed to secure a trailer of merchandise on November 15, 2005.

A trailer containing electronics is delivered to the store one time each year. The steps for securing the trailer were reviewed with Mr. Lewis one month and again one day before the trailer arrived. The procedure is to put a fifth wheel on the trailer, check in the merchandise, and put a padlock on the trailer. Mr. Lewis became distracted by other matters and failed to secure the trailer on November 15. It was later discovered that a driver had removed the trailer because he thought it was empty. The procedure was for the trucking company to notify Wal-Mart as to when the trailer was being removed. No such notice was provided on November 15. The trailer was located after approximately three hours and returned to Wal-Mart. All \$58,000.00 worth of merchandise was accounted for. As a result of this incident, Mr. Lewis was discharged on November 17, 2005.

In making the decision to discharge, the employer also considered the fact that Mr. Lewis had been counseled on two prior occasions. On May 27, 2004, he was given a verbal warning because he was not distributing manager's notes to department managers as required. He was not at that time fully aware of all the duties he was to perform as assistant manager. Mr. Lewis was given a "decision-making" day on February 15, 2005 because he changed the date on which an employee had signed her evaluation. He changed the date so that it would appear that he had done the evaluation timely and would not get into trouble for doing it late.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Lewis was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although the employer's evidence established that Mr. Lewis was an unsatisfactory employee, it did not establish a willful or wanton disregard of the employer's interests or standards. His actions regarding manager's notes were not repeated after the verbal warning in May of 2004. He did not take any inappropriate steps regarding evaluations after the warning in February of 2005. Although Mr. Lewis failed to secure the trailer on November 15, his failure was due to the fact that he was distracted by other, work-related matters. Securing the trailer was probably more urgent than the matter he was attending to. However, his poor judgment in deciding which matter to handle first was not an act of misconduct. Moreover, Mr. Lewis had no notice that the trailer was being removed as the trucking company did not follow the usual procedure of giving Wal-Mart notice that the trailer was being removed.

The employer's evidence failed to establish that Mr. Lewis deliberately and intentionally acted in a manner he knew to be contrary to the employer's standards or interests. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated January 10, 2006, reference 01, is hereby affirmed. Mr. Lewis was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs