

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

DUSTIN W HAMPTON  
207 “B” AVE W  
OSKALOOSA IA 52577

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

Appeal Number: 05A-UI-07087-CT  
OC: 06/12/05 R: 03  
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 June 28, 2005, reference 01, which held that no disqualification would be imposed regarding Dustin Hampton's separation from employment. After due notice was issued, a hearing was held by telephone on July 28, 2005. Mr. Hampton participated personally. The employer participated by Michael Orndorff, Tire Lube Express Manager. Exhibits One through Ten were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Hampton was employed by Wal-Mart from May 26, 2004 until June 13, 2005 as a full-time automotive technician. He was discharged from the employment. The final incident occurred on June 2 when he and two others were attempting to seal a tire onto a rim. After approximately two hours, the manager trainee suggested they use ether. At some point, someone other than Mr. Hampton went inside the store and returned with a can of tractor starter fluid and attempted to use it to get the tire to bead on the rim. They were outside and Mr. Hampton was present when the attempt was made.

There is a posting in the Tire Lube Express area that advises technicians that flammable substances should never be introduced into a tire when attempting to seal tire beads. The others involved in the incident were given written warnings but, Mr. Hampton was discharged because he had a prior disciplinary action from February 17, 2005. On that occasion, he could not remove the old oil filter gasket when doing an oil change and put the new gasket over the old one. He ran the car until the oil pressure was up but did not note any oil leaks. As the customer was leaving, he noted leaking but could not catch the customer before she drove away. He received a "decision-making" day as a result of his actions. The two matters referred to herein were the sole reason for his June 13, 2005 discharge from Wal-Mart.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Hampton 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). Before a disqualification is imposed, the evidence must establish that the discharge was based on a current act that constituted misconduct within the meaning of the law.

In the case at hand, Mr. Hampton's discharge was prompted by the events of June 2 when starter fluid was used to try to bead a tire. The evidence establishes that it was not Mr. Hampton who obtained the starter fluid used on June 2. Although he was present at the time the fluid was used, the evidence failed to establish that he was an active participant in using the prohibited liquid. For the above reasons, the administrative law judge concludes that the employer has failed to establish that Mr. Hampton engaged in misconduct on June 2. The only other disciplinary action was in February of 2005. The incident in February was too remote in time to be considered a current act in relation to the June 13 discharge.

For the reasons stated herein, it is concluded that the employer has failed to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

#### DECISION:

The representative's decision dated June 28, 2005, reference 01, is hereby affirmed. Mr. Hampton was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf