

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RAYMOND F BLACK

Claimant

APPEAL NO: 07A-UI-04816-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 04/15/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's May 1, 2007 decision (reference 01) that concluded Raymond F. Black (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2007. The claimant participated the hearing. Dave Armstrong, a co-manager, and Thomas Baumgardner, a loss prevention coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 8, 2002. The claimant worked as a full-time sales associate in the garden center. The employer's policy allows employees 15-minute breaks.

During the course of his employment, co-workers complained about the claimant taking excessively long breaks. On January 23, 2007, the claimant received a written warning because he had punched in from a lunch break and did not return to work for another 20 minutes. Instead of going back to work, the claimant went to the break room to say something to a co-worker. The claimant then became engaged in a conversation and was in the break room for an additional 20 minutes. Since the claimant had received warnings for other issues, the January 23, 2007 warning was the equivalent to a final written warning even though it was the first written warning for this issue.

At various times subsequent to January 23, Armstrong verbally reminded the claimant about taking excessively long breaks. The claimant indicated he had a problem losing track of time when he talked.

On April 11, the claimant took a shopping cart of garbage to the employer's baler. After taking care of the garbage, the claimant went on a break. Baumgartner's office is next to McDonalds and noticed the claimant go into McDonalds. The claimant appeared to be in McDonalds for a long time before he left. As the employer's loss prevention coordinator, Baumgardner decided to investigate. The employer checked the claimant's timecard and discovered he had taken a 30-minute break later in during his shift. When the employer reviewed the video tape, the claimant walked into McDonalds at 4:55 p.m. and did not leave until 5:25 p.m. Instead of taking the allotted 15-minute break, the claimant took a 30-minute break. On April 12, 2007, the employer discharged the claimant for taking an excessively long break even though he had been warned about his breaks on January 23, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood his job was in jeopardy on January 23, 2007 when he received a final written warning or a Decision Day. However, this was the first time the employer gave the claimant a written warning for taking excessively long breaks. Even after the claimant received the written warning, the employer periodically talked to the claimant about watching the length of his breaks. The claimant acknowledged that when he became engrossed in a conversation, he lost track of time.

On April 11, 2007, the claimant was on break in McDonalds for 30 minutes instead of the allotted 15 minutes. The claimant did not realize he was in McDonalds that amount of time. The employer established business reasons for discharging the claimant because he took a 30-minute break instead of a 15-minute break on April 11. The facts do not establish that the claimant intentionally took excessively long breaks or even realized he was gone for more than 15 minutes on April 11. The claimant sometimes forgot about the time when he talked to people. Based on the facts in this case, the employer had justifiable business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally violated the employer's break policy. The claimant did not commit work-connected misconduct. As of April 15, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 1, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 15, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs