

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOE IBARRA
Claimant

APPEAL NO. 11A-UI-00772-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/05/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 14, 2011, reference 01, that concluded he was discharged for work-connected misconduct. Telephone hearings were held on March 14 and 25, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Frank Santiago, and with the assistance of an interpreter, Ike Rocha. David Williams participated in the hearing on behalf of the employer with witnesses, Linda Smith and Bruce Shelangoski. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an associate from February 29, 2009, to December 8, 2010. He was working as an overnight stocker until he injured his hand in 2010 and was given light-duty work as a greeter at the grocery door. He was informed and understood that under the employer's policies, employees were entitled to two paid 15-minute breaks and one unpaid 30-minute meal period during a shift. Employees are required to obtain permission from a supervisor to leave their work station to take a break.

The claimant started work at 10:00 p.m. as a greeter near the grocery door. After about two hours, the claimant needed to urinate. He asked another associate to take his place at the grocery door so he could go to the bathroom, but the associate declined.

The claimant still needed to urinate and decided to quickly go to the nearby maintenance closet and return to his post, rather than wait for a manager to find someone to replace him while he went to the rest room. The rest rooms were about 75 feet away. He went into the maintenance closet and urinated in the mop sink. The overnight manager entered the closet and discovered the claimant urinating into the sink. The claimant's back was to the manager, but the manager could see that he was leaning over the sink and could hear the sound of urination. The manager did not say anything but left the maintenance closet and returned to his office to

contact the other overnight manager. All employees have access to the maintenance sink. They consulted and determined that the claimant had not requested or received permission from a manager to take a break, using the walkie-talkie system.

At the end of the workday, the managers discharged the claimant for urinating in the maintenance closet and leaving his work station without management approval.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that Shelangoski was picking up his coat to go on a smoke break and told the claimant that he could not staff the grocery door so the claimant could use the bathroom because Shelangoski was going outside to smoke. Shelangoski's testimony is more credible on this point as it would be extremely unlikely that Shelangoski would have such a conversation in the maintenance closet with someone urinating or preparing to urinate in the sink. As I do not believe the claimant on this point, it undercuts his testimony about talking to a manager about taking a break and being told no. Finally, I do not believe the claimant's testimony that he went into the maintenance closet to urinate and stopped when Shelangoski entered the closet, but he returned to the maintenance closet later with an empty milk carton and urinated into it. And even if his testimony is true, it would simply mean the claimant left his post twice without authorization and urinated while in the maintenance closet, an equally distasteful act. The preponderance of the evidence and logical conclusions from that evidence establishes the claimant needed to urinate and believed he could quickly relieve himself in the closet and get back to his post without a manager noticing. I cannot find based on the evidence that the claimant's workers' compensation claim was a factor in the claimant's discharge.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Besides the distastefulness of what he did, he did it without considering that the employee could walk in and see him. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated January 14, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs