

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES W KAPPMAYER
Claimant

APPEAL NO. 07A-UI-05799-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/29/07 R: 04
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Charles Kappmeyer filed an appeal from a representative's decision dated June 5, 2007, reference 01, which denied benefits based upon his separation from Wal-Mart Stores. After due notice was issued, a hearing was held by telephone on June 26, 2007. The claimant participated personally. The employer participated by Mr. Cody Bengel, Assistant Manager.

ISSUE:

At issue in the matter is whether Mr. Kappmeyer was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered all of the evidence in the record, finds that: The claimant worked for this employer from April 16, 2002 until March 20, 2007 when he was discharged for violating the company's drug and alcohol policy by consuming alcohol during his lunch period. Mr. Kappmeyer held the position of people greeter on a full-time basis and was paid by the hour. The claimant was aware of the company rule which prohibits drinking before reporting to work or during any break or lunch periods during an employee's work shift. Mr. Kappmeyer signed an acknowledgement that he had received and understood the company's policy. The claimant was discharged after he was observed drinking beer during his lunch break on March 20, 2007 in a bar/restaurant near the Wal-Mart facility. Mr. Kappmeyer admitted to drinking during his lunch hour and, therefore, was not subjected to drug or alcohol testing per company policy.

Although Mr. Kappmeyer was aware of the company policy and had signed an acknowledgement of receiving it, he did not agree with it and did not follow it.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant was discharged for violation of a known company policy. The evidence establishes that Mr. Kappmeyer was aware

of the company policy which prohibits employees from drinking before reporting to work or drinking during breaks or lunch periods during their work shift. Although the claimant was aware of the policy and had signed an acknowledgement of it, he did not agree with it and did not follow it.

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.

For the reasons stated herein, the administrative law judge finds that the employer has sustained its burden of proof in establishing that the claimant's discharge took place for misconduct in connection with the work. Benefits are withheld.

DECISION:

The decision of the representative dated June 5, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided that he satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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