

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

SAM D SAMPLE
227 N WASHINGTON
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-11944-DWT
OC: 09/26/04 R: 03
Claimant: Respondent (2)

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, 4th 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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's October 26, 2004 decision (reference 02) that concluded Sam D. Sample (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Curt Penfold, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working at the Iowa City location on February 2, 2004. The claimant worked as a full-time snack bar department manager. The claimant's job was not in jeopardy as of July 26 and Penfold expected the claimant to return to work after July 26, 2004.

On July 26, 2004, Penfold talked to the claimant about an employee's complaint about an incident involving the claimant that happened outside the store. The claimant denied the employee's allegation. Since there were no witnesses, Penfold took no disciplinary action. The claimant's job was not in jeopardy. Although Penfold expected the claimant to work as scheduled the rest of the week, the claimant did not report to work or notify the employer on July 27, 28, 29 or 30.

On August 2, the claimant called Penfold and asked about his transfer request to the Ottumwa store. Prior to July 26, the claimant asked about transferring to the Ottumwa store and the employer was looking into this possibility. The employer considered the claimant to have abandoned his job when the claimant did not call or report to work at anytime July 27 through 30. The claimant indicated he had not called or reported to work those days because he had to go to Ottumwa for a family situation.

The claimant established a claim for unemployment insurance benefits during the week of September 26, 2004. As of the date of the hearing, the claimant had not received any benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence does not establish that the claimant intended to quit his job because he contacted the employer on August 2. The employer terminated the employment relationship when the claimant did not call or report to work for four consecutive days.

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's failure to report to work or contact the employer for four consecutive days amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee, especially a department manager. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of September 26, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 26, 2004 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 26, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/tjc