

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

STEPHENE R NEUBAUM
3623 TRANSIT AVE
SIOUX CITY IA 51106

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

Appeal Number: 04A-UI-00141-HT
OC: 11/30/03 R: 01
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, 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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated December 23, 2003, reference 01. The decision allowed benefits to the claimant, Stephen Neubaum. After due notice was issued a hearing was held by telephone conference call on January 28, 2004. The claimant participated on her own behalf. The employer participated by General Manager Tom Conrady.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Stephene Neubaum was employed by Wal-Mart as a full-time employee from November 25, 2002 until December 30, 2003.

On November 30, 2003, the claimant punched back in to work after her lunch break. She then returned to the break room with the associate she was training, stating that they could finish up their cigarettes even if they were back on the clock. A supervisor who was in the break room told her that was not a good idea, and she and the other associate left immediately. The incident was reported to General Manager Tom Conrady who discharged the claimant for "theft of company time."

Ms. Neubaum was working a full shift which entitled her to an unpaid 30-minute lunch break and two, 15-minute paid breaks. She had taken one paid break already, but had not taken the second break by the time the incident had occurred. The employer was unable to establish when or if she took the second break and how long it lasted. The claimant had not received any disciplinary action of any type prior to her discharge.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). In the present case the claimant took a minute or two longer for her lunch break after she punched in. While her intention may have been to take longer, she did not do so when admonished by a supervisor that it was "a bad idea." In addition, there is no evidence as to whether her second paid break of the day was the full 15 minutes or whether she deducted the extra time after lunch from this break. As there were no prior disciplinary actions against her at this time, the administrative law judge concludes this to have been a one-time error in judgment and this is not misconduct.

DECISION:

The representative's decision of December 23, 2003, reference 01, is affirmed. Stephene Neubaum is qualified for benefits provided she is otherwise eligible.

bgh/kjf