

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

RICHARD L ANNEGERS  
RR 1 BOX 155  
STRONGHURST IL 61480

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

Appeal Number: 04A-UI-09970-CT  
OC: 03/21/04 R: 12  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 8, 2004, reference 01, which held that no disqualification would be imposed regarding Richard Annegers' separation from employment. After due notice was issued, a hearing was held by telephone on October 7, 2004. The employer participated by Judy Gudex, Assistant Manager. Mr. Annegers did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: The decision which is the subject of this appeal was mailed to the employer's representative on April 8, 2004. An appeal was filed on April 19, 2004 but was not received by Iowa Workforce Development. The employer appealed from a statement of charges which reflected benefits paid to Mr. Annegers and charged to the employer's account.

Mr. Annegers was employed by Wal-Mart from June 25, 2002 until March 24, 2004 as a full-time unloader. He was discharged because of his attendance. He received a warning about his attendance on January 28, 2004. He was last late on February 5, 2004 and was last absent on February 16, 2004. Mr. Annegers was not discharged until March 24, 2004. The employer was unable to explain why there was a delay in discharging him after the final incident.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the employer's appeal should be considered timely filed as required by Iowa Code section 96.6(2). The employer attached a copy of the April 19, 2004 appeal letter to the appeal filed on September 9, 2004. There was no witness presented to give testimony on the timeliness issue. The administrative law judge presumes that the testimony would be that the appeal was filed on April 19, 2004. Any doubt as to whether the appeal was filed timely shall be resolved in favor of the employer. Accordingly, the administrative law judge assumes jurisdiction of the separation issue.

The next issue is whether Mr. Annegers was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. The employer testified that Mr. Annegers was discharged because of his attendance and that the last infraction was on February 16, 2004. However, Mr. Annegers was not discharged until over one month later on March 24, 2004. The evidence did not establish any justification for the delay in discharging. The administrative law judge concludes, therefore, that the employer has failed to establish a current act of misconduct as required by 871 IAC 24.32(8). Accordingly, no disqualification is imposed.

#### DECISION:

The representative's decision dated April 8, 2004, reference 01, is hereby affirmed. Mr. Annegers was discharged by Wal-Mart but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc