

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

BRIAN H CRANDALL  
4101 GORDON DR  
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-11646-SWT  
OC: 10/03/04 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, 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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 19, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 18, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Eric Hansen participated in the hearing on behalf of the employer. Exhibits One through Three were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a service technician from May 21, 2003 to October 3, 2004. The claimant's supervisor was Eric Hansen, the service manager.

The claimant was warned about absenteeism after he reported to work late on May 14, was absent from work on June 3, and left work early on June 26, 2004. He left work early because his wife who was having complications with her pregnancy called and stated that she was sick and needed him to care for her. This final warning he received on June 30, 2004, informed him that the next step in the disciplinary process was discharge.

In late September 2004, the claimant changed the oil on a car. When he replaced the oil drain plug, the plug became stripped and later the owner discovered an oil leak. The oil pan had to be replaced at the employer's expense. On October 3, 2004, the claimant was discharged based on the oil leak and the prior discipline he had received. The claimant performed the job to the best of his ability and followed the procedures required. He did not deliberately do anything to cause the plug to be stripped.

#### 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.

871 IAC 24.32(1)a, (8) provide:

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).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law was established in

this case. At most, the employer has established ordinary negligence by the claimant that was not repeated negligence of such a degree that it would equal willful misconduct in culpability.

DECISION:

The unemployment insurance decision dated October 19, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf