

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

JESSE D BLAINE
2250 – 9TH ST APT 4
CORALVILLE IA 52241-1534

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

Appeal Number: 06A-UI-03819-DWT
OC: 03/05/06 R: 03
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:

Wal-Mart Stores, Inc. (employer) appealed a representative's March 23, 2006 decision (reference 01) that concluded Jesse D. Blaine (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2006. The claimant participated in the hearing. Joseph Eldred, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 10, 2005. The claimant worked as a part-time cashier. The employer's tobacco policy informs employees they must ask for identification from any customer who does not appear to be over 27. The employer's policy further informs employees that if this policy is violated, the employer will discharge the employee.

Prior to February 26, 2006, the claimant's job was not in jeopardy. On February 26 just before the end of the claimant's shift a customer bought some cigarettes from the claimant. The claimant did not ask for the customer's identification because the customer looked over 27 to the claimant.

On February 28, 2006, the employer received a report from a company who hires secret shoppers who shop at the employer's store to make sure employees follow the employer's tobacco policy. This report indicated the claimant failed to ask for the identification of a secret shopper who was younger than 27 on February 26.

When the employer talked to the claimant, he had no independent recollection of the sale but believed he had not asked for any identification because the customer looked 27 years or older. The employer did not review any security tapes in connection with this sale. In accordance with the employer's policy, the employer discharged the claimant on March 1 for violating the employer's tobacco policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer established compelling business reasons for discharging the claimant after the claimant failed to ask a person who was younger than 27 for some identification before selling tobacco products to the customer. Since the employer's policy is based on an employee's subjective perception as to whether a customer is 27 years or older, the facts do not establish

that the claimant intentionally violated the employer's policy. The facts do not establish that the claimant sold the tobacco products to a minor on February 26. Therefore, the claimant did not substantially violate the employer's policy.

Under the facts of this case, the claimant did not commit work-connected misconduct. As of March 5, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 23, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 5, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf