

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ADAM A RHEULT
Claimant

APPEAL NO. 09A-UI-04327-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/01/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Adam Rheault, filed an appeal from a decision dated March 11, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 13, 2009. The claimant participated on his own behalf. The employer, Wal-Mart, participated by Grocery Manager Ryan Murray.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Adam Rheault was employed by Wal-Mart from December 26, 2006 until January 27, 2009 as a full-time grocery sales associate. He received a verbal and a written warning for attendance in February and October 2007, and a final warning, or decision making day, on March 5, 2008, for poor job performance. The next step after the decision-making day is discharge, unless one year has passed at which time the warning would drop off.

In the fall of 2008 Grocery Manager Ryan Murray held a meeting with all of the grocery team. One of the problems he discussed was outdated product on the shelves. Each team member was assigned specific aisles where it would be their responsibility to rotate the product and remove any which had passed the expiration date.

On January 27, 2009, the night stock crew brought to Mr. Murray's attention a large amount of outdated product in Mr. Rheault's aisle. He checked the aisle and found \$850.89 worth of candy which was passed its expiration date. Mr. Rheault was discharged when he came into work that day for failing to perform an essential function of his job by removing outdated product.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised his job was in jeopardy due to poor work performance. In addition, the entire grocery team had been notified that outdated product was a concern in the grocery area. In spite of the warnings the claimant did not rotate older product and remove outdated product from the aisle which he had been assigned. He could provide no explanation other than that he might have "missed" the fact the items were outdated, or the night stock crew had put outdated product in the aisle. However, since the night stock crew discovered the outdated items it is not likely anyone from the crew put it there.

The record establishes the claimant failed to perform the essential functions of his job and left outdated product on the shelves. This was in direct violation of the orders he and other team members were given at the grocery staff meeting. He could provide no credible explanation for the outdated product in the area for which he was solely responsible. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of March 11, 2009, reference 01, is affirmed. Adam Rheault is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css