

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC L EYE
Claimant

APPEAL NO. 09A-UI-18002-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/01/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 24, 2009, reference 01, holding him not eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on January 11, 2010. The claimant participated personally. Although duly notified the employer did not respond to the notice of hearing and did not participate.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having reviewed the evidence in the record, finds: Eric Eye was employed by Wal-Mart Stores, Inc. from December 2007 until October 28, 2009 when he was discharged from employment. Mr. Eye held the position of full-time receiving associate and was paid by the hour. His immediate supervisor was Shane Turner.

The claimant was discharged after he violated company policy by using a personal cell phone at work on or about October 28, 2009. The matter was reported to the company management by another employee. Company video surveillance tape confirmed that the claimant was using his cell phone in violation of company policy. Mr. Eye had previously been specifically warned about cell phone or texting use at work in November 2008. The claimant was also aware of the company policy as it had been specifically addressed at the time of hire. Based upon the claimant's violation of the company work rule after being previously warned, he was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 evidence in the record establishes that Mr. Eye was aware of the company policy which prohibited the personal use of cell phones or texting during work hours on company premises. The evidence also establishes that Mr. Eye had previously been warned for violation of the rule and was aware that his employment was in jeopardy. The claimant was discharged after it was reported and verified by video surveillance that the claimant had once again violated the rule on or about October 28, 2009 after being warned by the company.

The claimant's conduct showed an intentional disregard for the employer's interests and standards of behavior that the employer had a reasonable right to expect of its employees under the provisions of the Iowa Employment Security Act. Benefits are withheld.

DECISION:

The representative's decision dated November 24, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs