

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

SANDRA J CYRUS
504 PINE ST
WATERLOO IA 50703-3809

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

Appeal Number: 06A-UI-06792-HT
OC: 06/04/06 R: 03
Claimant: Appellant (2)

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:

The claimant, Sandra Cyrus, filed an appeal from a decision dated June 22, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 9, 2006. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Assistant Manager Emily Marx.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sandra Cyrus was employed by Wal-Mart from April 14, 1998 until May 31, 2006. She was a full-time maintenance person.

On May 23, 2006, the claimant had a work-related accident and was sent to Allen Memorial hospital for treatment. Under company policy she also gave a urine sample for drug testing. The sample was sent to Lab One for analysis. A medical review office contacted the claimant and questioned her about prescription and over-the-counter medications she was taking. She was advised the test had shown positive for marijuana.

Ms. Cyrus contacted Co-Manager Gary Owens on May 31, 2006, and he asked her to come to the store. At that meeting he told her she was being discharged because of the test. The claimant admitted to smoking marijuana about two weeks before the test. She was not sent notice of the results by certified mail by Wal-Mart, nor was she notified of her right to have the split sample retested at a laboratory of her choice.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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).

The claimant was discharged due to a drug analysis showing positive for marijuana. Although the claimant admitted to smoking marijuana, it was not a current act, having occurred at least two weeks prior to the test. There is no indication she was “under the influence” of any controlled substance while in the work place.

In addition, the employer did not follow the requirements of Iowa Code chapter 730.5 by notifying the claimant of the results in a certified letter, nor did it notify her of her right to have the sample retested at a laboratory of her choice. She was discharged immediately upon the receipt of the initial test results. The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative’s decision of June 22, 2006, reference 01, is reversed. Sandra Cyrus is qualified for benefits provided she is otherwise eligible.

bgh/pjs