

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

RALPH A GATES
924 DAWSON ST
WATERLOO IA 50703

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

Appeal Number: 04A-UI-11640-S2T
OC: 09/19/04 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 for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's October 18, 2004 decision (reference 02) that concluded Ralph Gates (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 22, 2004. The claimant participated personally. The employer participated by Dan McKinney, Co-manager; and Penny Marshall, Personnel Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 31, 2000, as a full-time stocker. The claimant suffered a non-work-related foot injury. His physician gave him a note indicating he could not work from August 20 through September 8, 2004. The claimant gave the note to the employer and the employer allowed the claimant not to report his absence each and every day.

The employer terminated the claimant on September 5, 2004, when the claimant did not report his absences on September 3, 4 and 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was not.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incidents of absence were properly reported absences due to illness on September 3, 4 and 5, 2004. The claimant's absence does not amount to job misconduct because it was properly reported by doctor's note. The employer has failed to provide any evidence of willful and deliberate misconduct, which was the final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's October 18, 2004 decision (reference 02) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

bas/pjs