

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

ADAM M MYKRIS  
1440 SUNDANCE DR  
MARION IA 52302

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

Appeal Number: 05A-UI-04628-CT  
OC: 03/27/05 R: 03  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 19, 2005, reference 01, which held that no disqualification would be imposed regarding Adam Mykris' separation from employment. After due notice was issued, a hearing was held by telephone on May 19, 2005. The employer participated by Tamicka Wilson, Department Manager, and Jason Herman, Assistant Manager. Mr. Mykris did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Mykris was employed by Wal-Mart from July 16, 2004 until March 24, 2005 as a full-time cashier. He was discharged because of his attendance.

Mr. Mykris received written warnings concerning his attendance on December 7, 2004 and March 8, 2005. He plays in a band and the bulk of his absences were due to band-related matters. He was given a "decision-making" day on March 24, 2005. Mr. Mykris was to return to work on March 25 but called to report that he would be absent. He stated he needed the day off but would not give a reason for needing the time off. He was told that he could not have the time off. He told the employer he would not be in and would suffer the consequences. As a result of his failure to report for work on March 25, Mr. Mykris was discharged. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Mykris was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

The primary reason for Mr. Mykris' absences was that he was involved in activities related to playing in a band. Inasmuch as this was purely a personal matter, it did not constitute good cause for missing time from work. He had been warned at least three times that his attendance was jeopardizing his continued employment with Wal-Mart. In spite of the warnings, Mr. Mykris failed to report for work the day following disciplinary action. The evidence does not establish any reasonable cause for the absence of March 25 and, therefore, it is unexcused. Mr. Mykris' continued accumulation of unexcused absences following warnings constituted a substantial disregard of the standards he knew the employer expected of him. Based on the foregoing, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

No overpayment results from this reversal of the prior allowance as Mr. Mykris has not claimed benefits since filing his claim effective March 27, 2005.

#### DECISION:

The representative's decision dated April 19, 2005, reference 01, is hereby reversed. Mr. Mykris was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/sc