

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

KEVIN S SCHMIDT
310 E 4TH ST N #1
NEWTON IA 50208

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

Appeal Number: 05A-UI-03826-CT
OC: 02/27/05 R: 02
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, 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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 1, 2005, reference 04, which held that no disqualification would be imposed regarding Kevin Schmidt's separation from employment. After due notice was issued, a hearing was held by telephone on May 4, 2005. Mr. Schmidt participated personally. The employer participated by Beth Murphy, Assistant Manager.

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. Schmidt was employed by Wal-Mart from September 30, 2003 until February 28, 2005. He worked full time as an overnight stocker. Mr. Schmidt was discharged because of his attendance.

Mr. Schmidt received a warning about his attendance on October 24, 2004 because he had ten unapproved absences and one unapproved incident of tardiness. On November 6, 2004, he received an additional warning because he had been absent without calling in on November 5. The decision to discharge was based on his unreported absences of February 26, 27 and 28. He left work early due to illness on February 24 and called to report his intent to be absent on February 25. He did not contact the employer again until February 28 when he called about his paycheck. Attendance was the sole reason for the discharge.

Mr. Schmidt has received a total of \$3,010.00 in job insurance benefits since filing his claim effective February 27, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Schmidt 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). Mr. Schmidt was discharged because of his attendance. He had received warnings in October and November of 2004 advising him that his attendance was unacceptable and that continued attendance problems could result in his discharge. In spite of the warnings, Mr. Schmidt was absent from work for three consecutive days without calling in, February 26, 27, and 28. This constituted a substantial disregard of the standards he knew the employer expected of him. Three consecutive unreported absences is sufficient to establish excessive unexcused absenteeism within the meaning of the law. Accordingly, benefits are denied.

Mr. Schmidt has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 1, 2005, reference 04, is hereby reversed. Mr. Schmidt 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. Mr. Schmidt has been overpaid \$3,010.00 in job insurance benefits.

cfc/pjs