

**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**

**TIMOTHY G WATLAND  
2235 CAPITAL AVE  
DES MOINES IA 50317**

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

**Appeal Number: 06A-UI-01305-JTT  
OC: 01/01/06 R: 02  
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.

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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 filed a timely appeal from the January 23, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 20, 2006. Claimant Timothy Watland participated and presented additional testimony through Wal-Mart employee Cindy Dady. Assistant Manager Jason Dulinsky represented Wal-Mart and presented additional testimony through Assistant Manager Sean Stewart. Exhibits One through Three, Seven, and Eight were received into evidence

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Watland was employed by Wal-Mart as a full-time overnight maintenance worker from April 2, 2004 until January 5, 2006, when Assistant Manager Jason Dulinski discharged him.

The final incident that prompted the discharge occurred on January 5, 2006, when Mr. Watland took an extended break. Extended breaks had been an ongoing issue with the overnight maintenance crew. On January 5, Mr. Watland took a 25-30 minute break instead of the authorized 15-minute break. The maintenance crew leader alerted Assistant Manager Jason Dulinski of the extended break after he observed that Mr. Watland and other members of the maintenance team had been off the floor an excessive amount of time. Mr. Watland and two other maintenance crewmembers admitted to losing track of time and taking the extended break. Five days prior to this violation of the employer's 15-minute break policy, Assistant Manager Sean Stewart had counseled a group of employees that included Mr. Watland, regarding an unauthorized break. On July 15, 2005, the employer had reprimanded Mr. Watland for taking an unauthorized 11-minute break.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Watland was discharged for misconduct in connection with the employment that would disqualify him for benefits. It does not.

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.

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).

Since Mr. Watland was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Mr. Watland did in fact take an extended break in violation of the employer's 15-minute break policy on January 5, 2006. The evidence further indicates that Mr. Watland had been counseled about unauthorized breaks five days prior to the incident that prompted the discharge and had received another previous reprimand regarding unauthorized breaks. Though the decision to discharge Mr. Watland in connection with the unauthorized breaks was within the discretion of the employer, the administrative law judge concludes that the conduct did not constitute substantial misconduct that would disqualify Mr. Watland for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Watland was discharged for no disqualifying reason. Accordingly, Mr. Watland is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to claimant.

**DECISION:**

The Agency representative's decision dated January 23, 2006, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

jt/kjw