

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

JOHN H KOTOUK  
109 COTTAGE ST #B-2  
SHELLSBURG IA 52332

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

Appeal Number: 06A-UI-00850-CT  
OC: 08/28/05 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  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 12, 2006, reference 01, which held that no disqualification would be imposed regarding John Kotouc's separation from employment. After due notice was issued, a hearing was held by telephone on February 9, 2006. The employer participated by Elizabeth Fouts, Assistant Manager. Exhibits One through Four were admitted on the employer's behalf. Mr. Kotouc submitted a letter, admitted as Exhibit A, in lieu of appearance.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kotouc was employed by Wal-Mart from November 14 until December 16, 2005, as a full-time maintenance person. On December 15, Elizabeth Fouts attempted to give him a note regarding duties he was to perform. He refused to take the note from her but did take it when it was delivered by a male supervisor. This was not the first occasion on which he had refused to take supervision from a Ms. Fouts. She had started having the male overnight supervisors tell Mr. Kotouc what duties to perform. The employer heard from other females that Mr. Kotouc was referring to them in disrespectful terms. A female of Filipino descent was referred to as a "gook." Other females were referred to as "dumb" or "stupid." He referred to Ms. Fouts directly as a "stupid woman" when she asked him not to repair a floor scrubber because it was still under warranty. It was also reported that he had degraded Ms. Fouts in the presence of other associates on several occasions. Mr. Kotouc was given a verbal warning about his conduct approximately two weeks before his separation.

On December 15, it was reported that Mr. Kotouc had been in the sporting goods department sweeping for an hour but that he was going over the same area repeatedly. When Ms. Fouts went to observe, she noted that he was sweeping in circles. Mr. Kotouc's shift was to end at 6:30 a.m. on December 16. At approximately 6:15, Ms. Fouts noted him standing by the time clock with his coat on. She directed him to punch out and leave but he stood by the time clock for 15 minutes waiting to punch out. Mr. Kotouc was discharged the same day.

Mr. Kotouc filed an additional claim for job insurance benefits effective December 18, 2005. He received \$246.00 in job insurance benefits for each of the five weeks ending January 21, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Kotouc 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. Kotouc displayed a clearly insubordinate attitude towards the assistant manager over him. He refused to take direction from her, made disparaging remarks about her to other associates, and referred to her as a "stupid woman." Given his conduct with other females, it appears that his insubordination was based on the fact that she was female. Mr. Kotouc's conduct had the potential of undermining Ms. Fouts' authority within the workplace. His final conduct of standing by the time clock and not working for 15 minutes constituted theft of time, as it resulted in him being paid for time he did not work. Rather than leave when directed to do so by Ms. Fouts, Mr. Kotouc remained by the time clock until his scheduled time to leave.

After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Kotouc has received benefits since filing his additional claim effective December 18, 2005. 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 January 12, 2005, reference 01, is hereby reversed. Mr. Kotouc 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. Kotouc has been overpaid \$1,230.00 in job insurance benefits.

cfc/kjw