

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**RONALD GORE**  
Claimant

**APPEAL NO. 10A-UI-09317-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 06/28/09**  
**Claimant: Respondent (1)**

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 June 18, 2010, reference 05, which held that no disqualification would be imposed regarding Ronald Gore's separation from employment. After due notice was issued, a hearing was held by telephone on August 17, 2010. Mr. Gore participated personally. The employer participated by Emily Lenhart, Assistant Manager. Exhibits One through Eight were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Gore was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gore was employed by Wal-Mart from July 23, 2008 until June 1, 2010. He worked full time unloading trucks. He was discharged because he forgot to punch out for meal breaks on three occasions. The three occasions were December 16, 2009; February 16, 2010; and May 24, 2010. He had not been disciplined for failing to punch out for his meal break.

The last disciplinary action taken against Mr. Gore prior to discharge was on September 30, 2009 when he was given a "decision-making" day. The discipline was due to the fact that the employer did not feel he was being productive on the line.

**REASONING AND CONCLUSIONS OF LAW:**

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. Gore was discharged because he failed to punch out for his meal break on three occasions. He was under the impression that a missed punch would not be held

against him if he reported it during the same week it occurred. The employer was unable to refute his assertion and failed to establish that he failed to notify management when he missed a punch.

The administrative law judge is satisfied that Mr. Gore was not deliberately and intentionally failing to punch out for lunch in order to be paid for time not actually worked. His failure to punch out on three occasions did not represent a substantial disregard for the employer's standards or interests. Moreover, he had not been warned about such conduct even through the first incident occurred as far back as December 16, 2009. For the above reasons, it is concluded that the discharge was not prompted by a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8).

The next most prior disciplinary action against Mr. Gore was on September 21, 2009. Conduct that occurred in September of 2009 would not represent a current act in relation to a discharge that occurred in June of 2010. For the reason stated herein, it is concluded that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge Mr. Gore, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

**DECISION:**

The representative's decision dated June 18, 2010, reference 05, is hereby affirmed. Mr. Gore was discharged by Wal-Mart but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs