

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

JEREMY D HARRISON
3900 E 38TH ST
DES MOINES IA 50317

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

Appeal Number: 05A-UI-11437-CT
OC: 10/09/05 R: 01
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.

(Administrative Law Judge)

(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 October 26, 2005, reference 01, which held that no disqualification would be imposed regarding Jeremy Harrison's separation from employment. After due notice was issued, a hearing was held by telephone on November 28, 2005. Mr. Harrison participated personally and offered additional testimony from Denise Myers. The employer participated by Ryan Oshel, Co-Manager. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Harrison was employed by Wal-Mart from

September 12, 2002 until October 8, 2005 as a full-time sales associate. He was last assigned to work in the dairy department. He was discharged after he received a series of warnings.

On April 23, 2005, Mr. Harrison received a written warning because he ate merchandise. A bag of chips had come open in processing and, rather than taking the bag to the claims area as required, Mr. Harrison ate some of the chips. On June 29, 2005, Mr. Harrison was given a "decision-making" day because he violated a known store policy. He went shopping in the electronics department during a break, selected several DVD's, and hid them in the grocery section for later purchase. Such conduct is considered "under-stocking" and is prohibited by the employer's policies.

The final incident that caused Mr. Harrison's discharge occurred on October 8, 2005, when he was stocking merchandise in the dairy section. A vendor was giving away samples of ice cream in the store and Mr. Harrison obtained a cone while he was not on break. He was away from the dairy area approximately five minutes. He was discharged the same day.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Harrison 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). In order for a disqualification to be imposed, the misconduct must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Mr. Harrison did violate policy by eating from the bag of opened chips. There was no evidence that he, himself, opened the bag of chips. He also violated policy by placing the DVD's in the grocery section for later purchase. There was no evidence that he made any attempt to remove the items from the store without first making payment. Mr. Harrison's consumption of the ice cream cone while not on break was, at most, an error in judgment.

The matters that caused Mr. Harrison's discharge did not evince a wanton or willful disregard of the employer's interests. The three lapses identified herein do not establish substantial misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reason stated herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 26, 2005, reference 01, is hereby affirmed. Mr. Harrison was discharged by Wal-Mart but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw