

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

LANCE A NEWMARCH
1025 – 14TH AVE S
CLINTON IA 52732

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

Appeal Number: 06A-UI-01698-CT
OC: 12/25/05 R: 04
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 Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 31, 2006, reference 02, which held that no disqualification would be imposed regarding Lance Newmarch's separation from employment. After due notice was issued, a hearing was held by telephone on March 1, 2006. Mr. Newmarch participated personally. The employer participated by Evan Jones, Club Manager, and Bob Holst, Tire and Battery Center Lead. Exhibits One through Five 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. Newmarch was employed by Sam's Club, a division of Wal-Mart, from November of 1996 until December 22, 2005. He was employed full time as a tire technician. He was discharged from the employment.

On November 17, 2005, Mr. Newmarch became frustrated when the computer screen locked up. In response, he struck the screen with his fist, causing it to break. It cost approximately \$3,000.00 to repair the damages. Mr. Newmarch was given a "decision-making" day to decide if he wanted to continue working for Sam's Club.

The decision to discharge Mr. Newmarch was based on his conduct of December 22, 2005. A club member had called to report a popping sound from the wheel of the vehicle. Bob Holst, lead person, decided to meet with the technicians regarding the problem. He asked Mr. Newmarch and the three other technicians to drop what they were doing to have a brief meeting. As he was explaining the problem, Mr. Newmarch asked if his name was on the work order. When Mr. Holst indicated that it was, Mr. Newmarch asked if the wheel fell off. Mr. Holst indicated that it had not but he still wanted to explain the importance of tightening the lug nuts. Mr. Newmarch laughed and walked away. He was asked several times to return to the meeting but did not. When approached by Mr. Holst, he indicated that he was busy and that Mr. Holst was not to "start with" him. As a result of walking away from the meeting, Mr. Newmarch was discharged on December 22, 2005.

Mr. Newmarch has received a total of \$2,045.00 in job insurance benefits since filing his claim effective December 25, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Newmarch 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). The decision to discharge Mr. Newmarch was due to his insubordination on December 22, 2005. He walked away from a meeting called by the lead person and refused to return to the meeting as directed. Although he may have been busy with other work, it was within the employer's prerogative to pull him away from his tasks to discuss work-related issues. Mr. Newmarch knew his continued employment was in jeopardy because of the prior disciplinary action of November 17, 2005.

Approximately one month before his discharge, Mr. Newmarch had caused damage to the employer's computer when he struck it with his fist. He knew his actions were contrary to the type of behavior the employer expected. His conduct in damaging the computer on November 17 and in being insubordinate on December 22 is sufficient to establish disqualifying misconduct. Accordingly, benefits are denied.

Mr. Newmarch has received job insurance benefits since filing his claim effective December 25, 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 31, 2006, reference 02, is hereby reversed. Mr. Newmarch 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. Newmarch has been overpaid \$2,045.00 in job insurance benefits.

cfc/kkf