

**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**

**DANIEL P ROSA
2016½ FOURTH AVE N
FORT DODGE IA 50501**

**WAL-MART STORES INC
% TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-05458-CT
OC: 04/04/04 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 May 3, 2004, reference 02, which held that no disqualification would be imposed regarding Daniel Rosa's separation from employment. After due notice was issued, a hearing was held by telephone on June 8, 2004. Mr. Rosa participated personally. The employer participated by Tony Dasent, Tire Lube Express Manager. Exhibits faxed to the Appeals Section by the employer on June 7, 2004 were not admitted as Mr. Rosa did not have copies.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Rosa was employed by Wal-Mart from November 25, 2003 until March 25, 2004 as a tire lube technician. He worked from 20 to 39 hours each week. Mr. Rosa was discharged based on an allegation that he falsified his application for hire.

One of the questions asked on the work application is whether the applicant has ever been convicted of a felony. Mr. Rosa answered "no" to the question. At some later point, someone from loss prevention conducted a background check and found that Mr. Rosa did have convictions on his record. The employer was unable to provide specifics as to what Mr. Rosa had been convicted of and on what dates. The information obtained by loss prevention was not available at the time of the hearing. Mr. Rosa denied under oath that he had any felony convictions at the time he completed the application. The alleged falsification of the employment application was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Rosa 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It was incumbent upon the employer to provide specific details concerning the reason for discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 24.32(4).

Mr. Rosa was discharged for allegedly providing false information concerning felony convictions on his application for hire. The employer has failed to provide evidence to establish that the response was, in fact, false. The individual participating in the hearing on behalf of the employer did not have with him any documents outlining Mr. Rosa's criminal history. This individual had not actually seen the report obtained by loss prevention. Given the employer's lack of specific information, the allegation that Mr. Rosa falsified his application has not been established. Accordingly, no disqualification is imposed.

DECISION:

The representative's decision dated May 3, 2004, reference 02, is hereby affirmed. Mr. Rosa was discharged by Wal-Mart but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/d