

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

MICHAEL P MCMAHON  
1422 – 10<sup>TH</sup> ST  
MANSON IA 50563

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

Appeal Number: 04A-UI-10613-CT  
OC: 08/15/04 R: 01  
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 September 20, 2004, reference 01, which held that no disqualification would be imposed regarding Michael McMahon's separation from employment. After due notice was issued, a hearing was held by telephone on October 21, 2004. Mr. McMahon participated personally. The employer participated by Amy Job Wetzek, Co-Manager, and Tony Dasent, Tire Lube Express Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### 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. McMahon was employed by Wal-Mart from November 20, 2002 until August 13, 2004. He was last employed full time as a technician in Tire Lube Express. He was discharged for repeated tardiness in reporting to work. Mr. McMahon was late on at least 15 occasions during the last two months of his employment. The tardiness was usually from 10 to 15 minutes and usually resulted from transportation issues.

Mr. McMahon received a written warning about his attendance on March 5, 2004. At that time, he had accumulated 33 occasions of tardiness. He received a second written warning regarding attendance on July 28, 2004. The decision to discharge was based on the fact that Mr. McMahon was late on August 13 and failed to clock in and out for lunch on that date.

Mr. McMahon has received a total of \$1,701.00 in job insurance benefits since filing his claim effective August 15, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. McMahon 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). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

The administrative law judge concludes from the evidence that Mr. McMahon was excessively tardy on an unexcused basis. He had at least 15 occasions of tardiness during the last two months of his employment. The administrative law judge considers this excessive. Mr. McMahon had been warned that his tardiness was jeopardizing his continued employment with Wal-Mart. In spite of the warnings, he still continued to report to work late for no reasonable cause. Absences from work caused by matters of purely personal responsibility, such as transportation, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. McMahon's repeated tardiness after warning constituted a substantial disregard of the employer's standards. As such, benefits are denied.

Mr. McMahon has received benefits since filing his claim. 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 September 20, 2004, reference 01, is hereby reversed. Mr. McMahon was discharged by Wal-Mart 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. McMahon has been overpaid \$1,701.00 in job insurance benefits.

cfc/kjf