

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

SCOTT A LONGHURST  
309½ CEDAR  
PO BOX 787  
WILTON IA 52778

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

Appeal Number: 04A-UI-04366-CT  
OC: 03/14/04 R: 04  
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, 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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 6, 2004, reference 01, which held that no disqualification would be imposed regarding Scott Longhurst's separation from employment. After due notice was issued, a hearing was held by telephone on May 11, 2004. Mr. Longhurst participated personally. The employer participated by Terry Brenner, Tire Lube Express Manager.

#### 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. Longhurst was employed by Wal-Mart from October 23, 2001 until May 17, 2003. He was last employed part-time in sporting goods. He resigned after being given the choice of quitting or being discharged. He was going to be discharged because he was not available to work the hours the employer needed him to work.

Mr. Longhurst had been a full-time employee but opted to go to part-time status because he was going to accept additional employment elsewhere. He completed a form on January 9, 2003 advising Wal-Mart of his new availability. He discussed with his supervisor and management his plans to accept additional employment and to limit his availability for work at Wal-Mart. He was not told that his plans would be a problem and, therefore, accepted the additional employment. From approximately February 1 until May 17, Mr. Longhurst worked for Wal-Mart based on his new availability. The employer was no longer agreeable to his availability as of May 17, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Longhurst was separated from employment for any disqualifying reason. Although he resigned, he did so only after being given the option of quitting for being discharged. Under such circumstances, the separation is considered a discharge and not a voluntary quit. See 871 IAC 24.26(21). 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).

Mr. Longhurst was discharged because his availability was no longer acceptable to Wal-Mart. He discussed the change in his availability before the change became effective. Moreover, he was allowed to work approximately four months based on his new availability. Given these factors, the administrative law judge concludes that he did not deliberately or intentionally act in a manner he knew to be contrary to the employer's standards or interests. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

#### DECISION:

The representative's decision dated April 6, 2004, reference 01, is hereby affirmed. Mr. Longhurst was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf