

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

KIRK L MARTINDALE
911 N 8TH ST #1
COUNCIL BLUFFS IA 51503

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

Appeal Number: 04A-UI-10226-CT
OC: 08/22/04 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 September 10, 2004, reference 01, which held that no disqualification would be imposed regarding Kirk Martindale's separation from employment. After due notice was issued, a hearing was held by telephone on October 14, 2004. Mr. Martindale participated personally. The employer participated by John Connell, General Manager. 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 the evidence in the record, the administrative law judge finds: Mr. Martindale was employed by Wal-Mart from May 1, 2002 until August 23, 2004 as a full-time merchandiser. He was discharged from the employment. Mr. Martindale received a warning regarding his attendance on March 1, 2004. The warning cited five occasions on which he had been absent. He was given a "decision-making day" on August 10 because stale product was found in the cooler he had stocked.

The decision to discharge was based on the fact that Mr. Martindale was late reporting his intended absence of August 18, 2004. He was to be at work at 4:00 a.m. but did not call until approximately 6:30 a.m. He was discharged the same day.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Martindale 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). Mr. Martindale was discharged because of his attendance. It is true that he was warned about his attendance on March 1, 2004. However, there was no evidence that the five absences which brought about the warning were not for reasonable cause or were not properly reported. It is also true that Mr. Martindale had been provided a "decision-making day." However, this disciplinary action was for not removing dated product from the cooler. Based on the evidence, the administrative law judge concludes that his was an isolated instance of such conduct.

Mr. Martindale's single incident of failing to give timely notice of an intended absence is not sufficient to establish disqualifying misconduct. Inasmuch as the employer has failed to establish substantial misconduct, no disqualification is imposed. 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).

DECISION:

The representative's decision dated September 10, 2004, reference 01, is hereby affirmed. Mr. Martindale was discharged for misconduct in connection with his employment. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/s