

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

JOAO J GUERRERO
44 GAS LANTERN SQ
MUSCATINE IA 52761

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

Appeal Number: 05A-UI-05786-DWT
OC: 05/08/05 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, 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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's May 20, 2005 decision (reference 01) that concluded Joao J. Guerrero (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 21, 2005. The claimant participated in the hearing. Troy Wygle, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 19, 2002. The claimant worked as a full-time overnight stocker.

During the claimant's employment, he received several written warnings. The employer followed its progressive discipline policy. When the claimant did not call or report to work on April 1, 4, and 5, the employer gave the claimant his final written warning or decision day on April 6, 2005. The claimant informed the employer that in the future he would talk to the employer in advance about taking time off for church-related activities.

In mid-April the claimant hurt his back at the end of his shift. Later when the claimant's back started hurting, he went to his doctor. The claimant's doctor gave him a work restriction of no heavy lifting and suggested that he work days instead of nights. After the claimant received the work restriction, he gave his work restriction to a manager. When the claimant asked if the employer would assign him to a dayshift, the manager indicated the store manager would have to make that decision. As instructed to do, the claimant left a message for the store manager to call him. The claimant then went home as he was directed to do. This manager did not tell the claimant anything about completing a work-related injury report. Although the claimant called a number of times to talk to the store manager, she was never available and did not return the claimant's calls. On April 25, 2005, the claimant went to pick up his paycheck. The claimant then learned the employer considered him to have terminated his employment. The employer made this conclusion because the claimant failed to notify the employer he was unable to work and did not report to work for at three consecutive days.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on some miscommunication between management personnel, the correct manager did not receive information that the claimant injured his back at work and could not lift heavy

objects. Instead, management understood the claimant just did not call or report to work for several days after his April 6 final warning. The employer decided to terminate the claimant's employment for justifiable reasons, the claimant did not commit work-connected misconduct. The claimant did not intentionally hurt his back and he gave the employer a copy of his doctor's work restrictions. Even though the claimant could have gone back to the store when he did not receive a phone call from the store manager, his failure to go back to the store prior to April 25 at most amounts to a good faith error in judgment and does not rise to the level of work-connected misconduct. As of May 8, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 20, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 8, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc