

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**PHILLIP J SCHELLENBERG**  
Claimant

**APPEAL NO. 07A-UI-01432-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 12/31/06 R: 04  
Claimant: Respondent (1)**

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 January 24, 2007, reference 01, which held that no disqualification would be imposed regarding Phillip Schellenberg's separation from employment. After due notice was issued, a hearing was held by telephone on February 26, 2007. Mr. Schellenberg participated personally. The employer participated by Patrick McGowan, Store Manager, and Steve Richmond, Human Resources Manager. Exhibits One through Five were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Schellenberg was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Schellenberg was employed by Wal-Mart from October 8, 2003 until December 21, 2006. He was last employed full-time as an assistant manager, a position he assumed in January of 2006. He was discharged because of his attendance.

Mr. Schellenberg was late reporting to work on March 12 and March 15, 2006. He was approximately ten minutes late on both occasions and, as a result, the store was opened late on both occasions. Mr. Schellenberg received a written warning on March 15. He was late reporting to work on August 8, 2006, thereby causing the store to be opened late again. He received a written warning on August 11, which also cited the fact that he was late providing a performance evaluation to an associate. On December 15, 2006, Mr. Schellenberg was 1.5 hours late and, again, the store was opened late. He received a final warning on December 18.

The decision to discharge was prompted by the fact that Mr. Schellenberg left work early on December 20, 2006. He was scheduled to work from 7:00 a.m. until 4:00 p.m. but left at 10:00 a.m. He had told the store manager that he planned to leave "a little early" but neither party confirmed the exact time he planned to leave. Mr. Schellenberg was notified of his discharge on December 21, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

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). The final conduct that triggers the discharge must constitute an act of misconduct. See 871 IAC 24.32(8). In the case at hand, Mr. Schellenberg's discharge was triggered by the fact that he left early on December 20. However, he had permission to leave work early. The employer assumed that leaving "a little early" meant Mr. Schellenberg would be leaving one hour earlier than scheduled.

Mr. Schellenberg was scheduled to leave work at 4:00 p.m. but left at 10:00 a.m. Although the administrative law judge might not consider 10:00 a.m. to be "a little early," the fact remains that there was no meeting of the minds between Mr. Schellenberg and the employer as to what time he would leave. It does not appear that he was directed to check with management before leaving. Because he had received permission to leave early and because there was no specific time of departure noted, the administrative law judge concludes that leaving at 10:00 a.m. on December 20 was not an act of misconduct.

It is true that Mr. Schellenberg had been late reporting to work and opening the store on four occasions. However, the employer had determined that a final written warning would be given before discharging him as a result of the tardiness. If the incident of December 20 had not occurred, Mr. Schellenberg would have continued in the employment until such time as he was late again.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Mr. Schellenberg should be disqualified from receiving job insurance benefits. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

**DECISION:**

The representative's decision dated January 24, 2007, reference 01, is hereby affirmed. Mr. Schellenberg was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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