

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

RAY R TANDY
1943 ZACHARY AVE
MONTPELIER IA 52759

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

Appeal Number: 04A-UI-07789-CT
OC: 06/20/04 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, 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 July 7, 2004, reference 01, which held that no disqualification would be imposed regarding Ray Tandy's separation from employment. After due notice was issued, a hearing was held by telephone on August 9, 2004. Mr. Tandy participated personally. The employer participated by Ann Nyman, Co-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. Tandy was employed by Wal-Mart from May 10, 1996

until June 3, 2004. He was last employed full time as a support manager. Because he was to enter management training, he was required to undergo a drug screen on May 28, 2004. Mr. Tandy had been made aware of the employer's policy to conduct drug testing when an individual is being promoted to management.

The employer received notice on June 1, 2004 that Mr. Tandy had tested positive for marijuana. He had last used marijuana approximately two months prior to the testing. He was not advised of his right to have a split of his original urine sample re-tested. His failure to pass the drug test was the sole reason for Mr. Tandy's discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Tandy 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 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. Tandy was discharged after he tested positive for drugs. Drug testing results may form the basis of a misconduct disqualification only if such testing is done in conformance with Iowa's drug testing laws found at Iowa Code Section 730.5. The provisions of Iowa Code Section 730.5(7)i require that the employer, after being notified of a positive test result, give the employee notice of the right to have a confirmatory test conducted on a split of the original urine specimen. Such notice is to be given by certified mail, return receipt requested. The employer herein did not afford Mr. Tandy such notice. Whether he would have availed himself of the opportunity for retesting is irrelevant. The fact remains that the employer did not allow him this opportunity to dispute the positive test results.

Because the employer did not comply with the requirements of Section 730.5(7)i, the test results may not be used to disqualify Mr. Tandy from job insurance benefits. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated July 7, 2004, reference 01, is hereby affirmed. Mr. Tandy was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b