

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

CHARLES L SCHEUERMANN  
31100 – 653<sup>RD</sup> AVE LOT 9  
MAXWELL IA 50161

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

Appeal Number: 05A-UI-12217-RT  
OC: 11-13-05 R: 02  
Claimant: Appellant (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:

The claimant, Charles L. Scheuermann, filed a timely appeal from an unemployment insurance decision dated December 1, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 19, 2005, with the claimant participating. Faith Munsterman, General Manager of the employer's store in Ames, Iowa, where the claimant was employed, and Jeff Martin, Assistant Manager at the same store, participated in the hearing for the employer, Wal-Mart Stores, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department of unemployment insurance records for the claimant. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge called Ruth Olson, a witness for the claimant, but when the administrative law judge announced that he had to bring into the conversation the

employer's witnesses, Ms. Olson apparently hung up. She did indicate something to the effect that she did not want to testify in the presence of the employer's witnesses. The claimant provided an offer of proof for the testimony of Ms. Olson.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently as a fuel station attendant, from December 16, 1999 until he was discharged on November 10, 2005. The claimant was discharged for an incident on November 9, 2005 in the break room. The claimant was in the break room watching television. A co-worker, Stephanie Riker, came into the break room and changed the channel on the television set without the claimant's approval. This upset the claimant. Another co-worker, who has a mental handicap, came into the break room and asked if he could watch the news. Ms. Riker said no. The handicapped individual then said that was okay because he liked Ms. Riker but did not like the claimant. The claimant then became more upset and called the mentally handicapped employee a "retard." Later that day in the parking lot the claimant accosted this mentally handicapped employee and told him that if he said anything about what the claimant had called him in the break room that the claimant had friends that would take him out. Ms. Riker reported this behavior and the next day the employer confronted the claimant and he admitted to these behaviors and was discharged. The employer has policies providing for respect for individuals and prohibiting harassment. These policies are in the employer's handbook, for which the claimant signed an acknowledgment as shown at Employer's Exhibit One. The claimant had never been accused of such behavior before nor had he ever had any warnings or disciplines.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as

is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on November 10, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that the claimant called a mentally handicapped co-worker a "retard" in the break room on November 9, 2005 and later threatened the mentally handicapped employee by telling him that he had friends that would take him out if the mentally handicapped employee told anyone about what the claimant had called him. The claimant admitted both of these statements to the employer's witnesses. At the hearing the claimant admitted to calling the handicapped employee a "retard" and indicated that he might have said something of a threatening nature to the handicapped employee. The administrative law judge concludes that the claimant both called the mentally handicapped employee a "retard" and threatened him if he told the employer what the claimant had called him. The employer has policies providing for respect for individuals and prohibiting harassment. The claimant testified initially that he was not aware of these policies but this is inconceivable to the administrative law judge since the claimant signed an acknowledgment from the handbook and stated that the policies were posted in the break room. Further, every employee must have some knowledge that certain behavior is indecent or inappropriate in the workplace despite the lack of any such rules by the employer. The administrative law judge concludes that the claimant did call a mentally handicapped individual a "retard" and further threatened that individual and that these acts and statements were deliberate acts constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinced a willful or wanton disregard of the employer's interests and are disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

#### DECISION:

The representative's decision of December 1, 2005, reference 01, is affirmed. The claimant, Charles L. Scheuermann, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct.

kkf/kjw