

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

EDWARD F FREEMAN
2302 – 3RD AVE
COUNCIL BLUFFS IA 51501

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

Appeal Number: 05A-UI-11438-CT
OC: 10/09/05 R: 01
Claimant: Respondent (2)

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) – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated October 27, 2005, reference 01, which held that no disqualification would be imposed regarding Edward Freeman's separation from employment. After due notice was issued, a hearing was held by telephone on November 28, 2005. The employer participated by Steve Johnson, Manager, and John Roe, Merchandise Manager. Mr. Freeman did not respond to the notice of hearing.

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. Freeman was employed by Sam's Club, a

division of Wal-Mart, from October of 1998 until May 12, 2005. He was last employed full time as receiving area manager. One of his job responsibilities was to make sure specified workers were trained and certified in the use of forklifts. The individuals are to complete computer-based learning modules and then undergo testing to be certified. The certifications have to be renewed on an annual basis. The same process for initial certifications is repeated for renewals.

On May 6, 2005, there was a forklift accident at the workplace. The individual operating the forklift did not have the required certification. After the accident, Mr. Freeman issued a forklift license to the individual involved in the accident and to three others. The employer discovered that none of the four had completed the necessary training to be certified at that time. One of the four had been certified previously but his certification had lapsed in July of 2004. This individual had not undergone the additional training and testing to be re-certified. When confronted, Mr. Freeman acknowledged the he had falsified the licenses. He indicated he falsified the licenses in an effort to protect the employer. The above incident was the sole reason for the discharge.

Mr. Freeman has received a total of \$1,620.00 in job insurance benefits since filing his claim effective October 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Freeman 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. Freeman was discharged for falsifying company documents. He deliberately and intentionally issued forklift licenses to individuals who had not completed the requirements to be certified. He left a false impression as to the amount of training the forklift operators had received. Had it become necessary to submit the licenses to a regulatory agency or in the course of legal proceedings, the employer could face allegations it falsified company records. Mr. Freeman's conduct was clearly contrary to the type of behavior the employer had the right to expect from a manager. It was not conduct in the best interest of the employer. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Freeman has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 27, 2005, reference 01, is hereby reversed. Mr. Freeman was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Freeman has been overpaid \$1,620.00 in job insurance benefits.

cfc/s