

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

JEREMIAH D BEAVER
1836 – 178TH PL
KNOXVILLE IA 50138 8918

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

Appeal Number: 06A-UI-05168-DWT
OC: 04/16/06 R: 02
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 8, 2006 decision (reference 01) that concluded Jeremiah D. Beaver (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 May 31, 2006. The claimant participated in the hearing. Nancy Kinsey and Rose Roland, the photo center 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 in 2004. In 2005, the claimant transferred to the photo center, where he worked part time. The employer's policy informs employees they cannot work off the clock or compete with the employer.

During the claimant's employment, he received warnings for attendance issues. On March 16, 2006, the claimant received his final warning for attendance problems. The employer informed the claimant and the claimant understood that if he violated any policy after March 16, the employer would discharge him.

On April 18, 2006, a customer asked the claimant if the employer could print a picture for a funeral that Friday. The customer wanted to combine two pictures into one picture. The employer does not do this type of work. The claimant informed the customer he does photography work and if the customer gave him permission the claimant could take the pictures home and he would combine the pictures in the way the customer wanted. The claimant did not believe this violated any of the employer's policies. The claimant did not intend to charge the customer and Wal-Mart could print the picture. The claimant understood he could not compete with any services the employer provided.

The claimant did the work for the customer at his home and put the picture on a CD so the customer could then have the picture printed by Wal-Mart. The employer learned about this arrangement on April 19 when the customer came back for the picture and the claimant was not yet at work. The employer concluded the claimant violated the employer's policy by doing work off the clock and discharged him as a result of the employer's progressive disciplinary policy.

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).

The employer established compelling business reasons for discharging the claimant. Pursuant to the employer's policy, the employer had good cause to discharge the claimant. The facts

establish the claimant did not realize he violated any policy when he offered to crop pictures to create a picture the customer wanted for a funeral. The claimant did not charge the customer anything for his services. The claimant had never done anything similar before and a similar situation had not been addressed by the employer. Even though the claimant's job was in jeopardy for attendance issues, he was discharged for working off the clock, which the employer considered a violation of one of the employer's rules. The evidence does not establish that the claimant intentionally disregarded the employer's interests. Instead, he was trying to help the employer. As a result, the claimant did not commit work-connected misconduct. As of April 16, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 8, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of April 16, 2006, 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/kjw