

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

SHERI L HUYNH  
1317 MAGNOLIA PKWY  
WATERLOO IA 50701

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

Appeal Number: 04A-UI-00452-B4T  
OC: 12/07/03 R: 03  
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, 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

STATEMENT OF THE CASE:

An appeal was filed on behalf of Wal-Mart Stores, Inc., from an unemployment insurance decision dated December 31, 2003, reference 01, that held, in effect, Sheri L. Huynh was discharged from her employment with Wal-Mart Stores, Inc. on December 5, 2003 for no disqualifiable reason. Unemployment insurance benefits were allowed.

A telephone conference hearing was scheduled and held on February 4, 2004. Sheri L. Huynh participated. Andy Fosselman, Assistant Manager at Waterloo, Iowa, participated on behalf of the employer. Penny Marshall Personnel, Manager, and Donna Goetsch, Deli Manager, participated as witnesses on behalf of the employer.

Official notice was taken of the unemployment insurance decision dated December 31, 2003, reference 01, together with the pages attached thereto (13 pages in all). Employer Exhibit 1 consisting of 9 pages was admitted into evidence. Employer Exhibit 2 was admitted into evidence as a late exhibit.

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Sheri L. Huynh was initially employed with a Wal-Mart Store, Inc. facility in Waterloo, Iowa, on December 5, 2001. The claimant was employed as a deli assistant at the Waterloo, Iowa facility.

The claimant received a copy of the employer handbook which contained specific instructions with respect to the handling of food products at the deli.

During the tenure of the claimant's employment she was never issued a written warning or a verbal warning that would indicate her job was in jeopardy for any reason. The claimant was, however, provided with an evaluation on or about October 18, 2003. See Exhibit 2 admitted into evidence.

The evaluation disclosed that the claimant's job performance was reasonably acceptable.

Donna Goetsch, Deli Manager, observed a coworker making sandwiches with lettuce that had not been washed according to the requirements of the Wal-Mart Stores, Inc. handbook. Donna Goetsch was informed that the claimant had prepared the lettuce and had failed to wash it properly.

The claimant reported the matter to Jack Livingston, Assistant Manager, who came to the deli at or about the time Ms. Goetsch was informed of the alleged incident.

Subsequently, on December 5, 2003, the claimant was called to the office of Mr. Livingston. The claimant was informed on that occasion that approximately a week or two before she had not washed the lettuce prior to making sandwiches as required by the employer's rules. The claimant was not at the facility when Ms. Goetsch had allegedly observed that the lettuce was not washed.

The claimant reasonably explained the procedure that she utilized on each occasion prior to making sandwiches and using lettuce as a part thereof. The claimant's testimony is believable and established that she complied with the rules in a reasonable manner on each occasion that she prepared the sandwiches. The lettuce clearly could have been washed early in the day and was dry at the time it was observed by Ms. Goetsch.

The claimant was then discharged by Mr. Livingston.

## REASONING AND CONCLUSIONS OF LAW:

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 evidence in the record did not establish that the claimant committed a deliberate act or omission which would constitute a material breach of her duties and obligations arising out of her contract of employment. The employer has failed to establish a willful or wanton disregard of the employer's interests and a disregard of a standard of behavior which the employer had the right to expect of the claimant. The claimant's testimony is believable and established that she at all times knew of the rules adopted by the employer relating to washing lettuce before she used it in making sandwiches and that she did in effect perform her job duties in an acceptable manner.

The employer has failed to establish even an isolated instance of a failure of the claimant's performance regarding the washing of lettuce prior to utilizing the lettuce and making sandwiches at the deli.

The administrative law judge concludes that misconduct has not been established and Sheri L. Huynh was discharged from her employment with Wal-Mart Stores, Inc. on December 5, 2003 for no disqualifiable reason within the intent and meaning of the foregoing sections of the Iowa Code and Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated December 31, 2003, reference 01, is affirmed. Sheri L. Huynh was discharged from her employment with Wal-Mart Stores, Inc. on December 5, 2003 for no disqualifiable reason and unemployment insurance benefits are allowed provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law.

kjf/b