

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

KIATANA T SANGSTER
1111 FULTON ST
KEOKUK IA 52632

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

Appeal Number: 05A-UI-08921-DT
OC: 08/07/05 R: 04
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, 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:

Kiatana T. Sangster (claimant) appealed a representative's August 25, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2005. The claimant participated in the hearing. Kristi Plumb appeared on the employer's behalf and presented testimony from two other witnesses, Brenda Kristner and Brent Varner. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 13, 2004. She worked full time as a maintenance associate at the employer's Keokuk, Iowa store. Her last day of work was August 5, 2005. The employer discharged her on that date. The stated reason for the discharge was making a false time report.

The claimant normally worked from 9:00 a.m. to 5:00 p.m. with an hour lunch. On August 3, 2005, the claimant left the store at 12:47 p.m. but did not punch out for lunch. She left the premises in her car, and then returned and punched in at 2:47 p.m. At the hearing, she asserted that she had a 1:00 p.m. doctor's appointment, and that she realized as she was leaving the doctor's office that she was an hour late returning from lunch. She then resumed working and completed the rest of her shift.

The next morning, Ms. Kristner, a training coordinator, approached the claimant and indicated that she could not complete the payroll records from the prior day because there was a missing punch out. The claimant responded that she had forgotten to punch out for lunch. Ms. Kristner gave the claimant a form to complete to account for the missing punch. The claimant completed the form, indicating that on the day before she had forgotten to punch out for lunch and that she had left for lunch at 1:40 p.m. She then turned the form in to the assistant manager, Mr. Varner.

On August 5, after reviewing the video surveillance from August 3, observing the time clock punches, and considering the claimant's missing punch statement, the employer determined that the claimant had intentionally failed to report that she was gone on her August 3 lunch break for two hours, rather than only one.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code §96.5-2-a.

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 claimant's assertion that she had forgotten that she had been gone from work for at least two hours on August 3, 2005 by the time on the morning of August 4, 2005 when she completed the form indicating that she had clocked out for lunch at 1:40 p.m. on August 3, 2005 is not credible, particularly given the claimant's acknowledgement that on August 3 she was conscious of the fact that she was running an hour late returning from work. The problem is not so much the claimant's failure to clock out on August 3 or her taking of the two-hour lunch at that time, but her failure to appropriately correct the situation was on August 4. The claimant's failure to acknowledge that she should have punched out at approximately 12:40 p.m. on August 3 and therefore was gone for two hours, not one, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 25, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 5, 2005. This disqualification continues until the claimant has been paid ten times she weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

ld/kjw