

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

DARYL H CAMPBELL
13645 – 118TH AVE
INDIANOLA IA 50125

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

Appeal Number: 06A-UI-00076-HT
OC: 11/27/05 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, 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:

The claimant, Daryl Campbell, filed an appeal from a decision dated December 29, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 19, 2006. The claimant participated on his own behalf and was represented by Attorney Phil Elgin. The employer, Wal-Mart, participated by Store Manager David Less. Exhibits One, Two and A were admitted into the record.

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: Daryl Campbell was employed by Wal-Mart from

September 25, 2001 until November 22, 2005. At the time of separation he was a part-time people greeter. He was trained for this position by taking computer-based instruction and from working with another greeter for three or four months.

During his time as a greeter he received one verbal and two written warnings for inappropriate conduct. He was passing out literature from another company to Wal-Mart customers, had searched a customer's bag without following the employer's protocol and was seen reading a newspaper while on duty rather than greeting customers as they entered or left the store.

On November 15, 2005, Store Manager David Less and Assistant Store Manager Elena King observed the claimant sleeping while sitting on the stool he used. He maintained he was merely "resting his eyes" but the managers watched him for half a minute and he did not move, acknowledge anything going on around him, or greet a customer who was leaving. The managers reviewed his disciplinary history and made the decision to discharge him. He was notified on November 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is

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 sleeping on the job was, in and of itself, an isolated incident, but there were other policy violations on his record which contributed to the decision to discharge. In spite of training and experience, he violated company policies by passing out literature unrelated to Wal-Mart, searched a customer's sack without using the required protocol, and was then sleeping on the job.

Mr. Campbell asserted he was having trouble sleeping, but at no time did he notify the employer of any medical problems which might cause him to sleep on the job nor did he ask for any accommodations in his work duties or environment to address the problem.

The administrative law judge does not find Mr. Campbell's assertion that he was merely "resting his eye" to be credible in light of the detailed testimony given by the employer's witness. The administrative law judge concludes that the incident of sleeping on the job was the final act of misconduct which, in conjunction with the other policy violations, constitutes substantial, job-related misconduct. The claimant is disqualified.

DECISION:

The representative's decision of December 29, 2005, reference 01, is affirmed. Daryl Campbell is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/kjw