

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

ERIC E PARKER
6621 WASHINGTON RD
BATAVIA IA 52533

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

Appeal Number: 05A-UI-01168-RT
OC: 01-02-05 R: 03
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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Eric E. Parker, filed a timely appeal from an unemployment insurance decision dated January 26, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on February 17, 2005 with the claimant participating. Rick Sirk, Store Manager for store no. 985 in Fairfield, Iowa, where the claimant was employed, and Matthew Spies, Assistant Store Manager at the same store, participated in the hearing for the employer, Wal-Mart Stores, Inc. Employer's Exhibits 1 and 2 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant was employed by the employer as a full-time ICS team member from April 4, 2003 until he was discharged on January 4, 2005. The claimant was discharged for an incident occurring on January 3, 2005 when he pulled his pants down, turned his back to a coworker and exposed his buttocks. This behavior is generally known as "mooning." The claimant did this in the UPC office which is considered a public place and has a window. The claimant's buttocks was bare at the time he exposed it to the coworker. The coworker reported this behavior to Matthew Spies, Assistant Store Manager and one of the employer's witnesses, who then reported it to Rick Sirk, Store Manager and the other employer's witness. Mr. Sirk then spoke to the claimant on January 4, 2005 and the claimant admitted the behavior and apologized and stated that he did so just to have fun. The claimant also signed an exit interview at Employer's Exhibit 2 admitting to the behavior.

The employer has a policy at Employer's Exhibit 1 prohibiting, among other acts, foul or obscene language or gestures and further prohibiting inappropriate conduct and finally providing that a violation of such policy can result in immediate termination. The claimant got a copy of this policy as shown in the acknowledgement at Employer's Exhibit 1 and was aware of the policy. There was no other reason for the claimant's discharge. Since separating from the employer on January 4, 2005 and filing a claim for benefits effective January 2, 2005, the claimant has filed no weekly claims and has received no benefits.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

The parties agree, and the administrative law judge concludes, that the claimant was discharged on January 4, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses testified, albeit from hearsay, that on January 3, 2005, the claimant pulled down his pants exposing his bare buttocks, bent over and "mooned" a coworker in the UPC office. Most of this testimony was confirmed by the claimant who stated that he just pulled his pants down a little way or half way but did expose his buttocks and turned his back on the coworker. The employer has policies prohibiting such behavior as shown at Employer's Exhibit 1, a copy of which the claimant received and for which he signed an acknowledgement and of which he was aware. At fact finding, the claimant stated "it was a really stupid thing." The administrative law judge agrees and further concludes that the claimant's behavior was willful and deliberate. What the claimant did here was far more than ordinary negligence in an isolated instance or a good faith error in judgment or discretion but was rather a deliberate act constituting a material breach of his duties and evincing a willful or wanton disregard of the employer's interest and, therefore, is disqualifying misconduct. The claimant testified that he did it because he wanted to have a little joke and was just trying to have some fun. The administrative law judge does not believe that this is an excuse for such an act and does not see either the humor or the fun in such an act. This occurred in a public place in an office in the presence of a coworker. Accordingly, the administrative law judge concludes that claimant's act in dropping his pants however far and exposing his buttocks however much was disqualifying misconduct and, as a consequence, he is disqualified to receive

unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of January 26, 2005, reference 01, is affirmed. The claimant, Eric E. Parker, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

tjc/tjc