

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

SEKULAS I RYAN
1922 WILKES AVE
DAVENPORT IA 52804

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

Appeal Number: 04A-UI-10742-DWT
OC: 08/29/04 R: 04
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 are 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 September 24, 2004 decision (reference 01) that concluded Sekulas I. Ryan (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 October 27, 2004. The claimant participated in the hearing. Jason Dennis, a co-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 on August 8, 2002. He worked as a full-time department manager.

Prior to August 22, 2004, the claimant saw other employees and managers wrestling with one another in the receiving area. As far as the claimant knew, none of these employees were disciplined for horsing around. The claimant understood the employer's horseplay policy did not allow employees to goof around power equipment. If an employee violated the horseplay policy, the employer followed its progressive disciplinary procedure.

During the course of his employment, the employer issued the claimant several warnings for various issues. The employer gave the claimant a decision day or his final warning in the progressive disciplinary procedure in March 2004. The claimant understood that if he again displayed his temper at work, he would be discharged because he had received a written warning for this problem in March 2004.

On August 22, 2004, the claimant and another employee were goofing around. They had both seen a recent movie and were using wrestling moves they had seen in the movie on one another. Neither person was upset; they were both goofing around for a minute or so.

The employer discharged the claimant on August 26 for committing horseplay at work on August 22. The employer disciplined the other employee for violating the horseplay policy. If the claimant had not received previous warnings for other problems, he would not have been discharged for this incident.

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 discharged the claimant for business reasons because he had already received written warnings for other issues. The facts show that if the claimant had not already had a decision day or a final written warning for other issues, the employer would not have discharged him for this incident. Since the claimant observed other employees and managers wrestling

with another without any consequence, the claimant did not realize he violated the employer's policy. The evidence does not establish that the claimant intentionally violated the employer's horseplay policy. Therefore as of August 29, 2004, the claimant is qualified to receive unemployment insurance benefits because he did not commit work-connected misconduct.

DECISION:

The representative's September 24, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 29, 2004, 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/tjc