

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

GARY L PRINCE
408 N 16TH PL
ESTHERVILLE IA 51334

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

AMENDED

Appeal Number: 05A-UI-03529-CT
OC: 03/06/05 R: 01
Claimant: Appellant (2)

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:

Gary L. Prince filed an appeal from a representative's decision dated March 28, 2005, reference 01, which held that he was disqualified from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone on April 25, 2005. Mr. Prince participated personally. The employer responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Prince began working for Wal-Mart on July 6, 2002. He worked full time as a tire and lube technician. He was discharged on March 7, 2005 based on an allegation that he put the incorrect oil filter in a vehicle. Prior to the separation, Mr. Prince had last been disciplined on July 28, 2004 when he struck a tire rack when backing up a vehicle. He had also received a warning on December 19, 2003 when he struck a forklift when backing up a vehicle.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Prince was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Prince was discharged after three separate incidents at work. He acknowledged that he did, in fact, strike a tire rack on one occasion and a forklift on another occasion. He was negligent on both occasions as he failed to use due care in backing up vehicles.

The employer did not participate in the hearing to establish to the satisfaction of the administrative law judge that Mr. Prince was the individual responsible for placing the incorrect oil filter in a vehicle. If he was the individual responsible, his actions would constitute another instance of negligence. Negligence does not constitute disqualifying misconduct unless it is so recurrent as to manifest a substantial disregard of the employer's interests or standards. See 871 IAC 24.32(1). Mr. Prince twice struck items while backing up and may have installed the incorrect oil filter on one occasion. Given the time spans between the incidents, the relatively small number of incidents, and the length of the employment, the administrative law judge concludes that Mr. Prince's negligence was not so recurrent as to establish a substantial disregard of the employer's interests. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 28, 2005, reference 01, is hereby reversed. Mr. Prince was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs/pjs