

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

BOBBY J HUSTED
226 AVE "F"
FORT MADISON IA 52627-3019

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

Appeal Number: 06A-UI-05962-CT
OC: 05/14/06 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 for Misconduct

STATEMENT OF THE CASE:

Bobby Husted filed an appeal from a representative's decision dated June 5, 2006, reference 01, which denied benefits based on his separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on June 27, 2006. Mr. Husted participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Husted was employed by Wal-Mart from

September of 2001 until May 17, 2006. He was last employed full-time as an unloader. Mr. Husted was discharged because of his attendance.

Mr. Husted was approximately one hour late reporting for work on May 17 because the person with whom he carpooled did not show up. He did not call the employer to advise that he would be late. He was late four to five other times during the last six months of his employment, usually because of the person with whom he was riding to work. He was also absent for full days during this period. Mr. Husted had received warnings advising that his employment was in jeopardy because of his attendance.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Husted 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). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Mr. Husted was late reporting to work at least five times during the last six months of his employment due to transportation issues. Absences caused by matters of personal responsibility, such as transportation, are not excused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Therefore, all five of the occasions on which Mr. Husted was late represented periods of unexcused absenteeism. Five occasions of unexcused absenteeism during a period of six months is excessive. Mr. Husted had been warned that his attendance could result in his discharge. In spite of the warnings, he did not take those steps necessary to ensure his timely arrival at work. For the reasons stated herein, it is concluded that excessive unexcused absenteeism has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 5, 2006, reference 01, is hereby affirmed. Mr. Husted was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/cs