

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

CHARLES O PETERSON
925 R AVE #6
NEVADA IA 50201

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

Appeal Number: 05A-UI-01563-CT
OC: 01/09/05 R: 02
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 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:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated February 4, 2005, reference 01, which held that no disqualification would be imposed regarding Charles Peterson's separation from employment. After due notice was issued, a hearing was held by telephone on March 1, 2005. Mr. Peterson participated personally. The employer participated by Rian Short, Store Manager, and Calvin Brown, Co-Manager. Exhibits One through Five were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Peterson was employed by Wal-Mart from March 4, 2000 until December 13, 2004. He was last employed full time as an entrance greeter. The decision to discharge him from the employment was triggered by an incident of December 13. Wal-Mart has a policy that customers returning firearms must be detained at the entrance and a salaried member of management contacted to make sure the firearm is unloaded and to escort the customer to the location where the return is processed. Mr. Peterson was discharged because the employer believed he had allowed an individual to enter the store with a 12-gauge shotgun without a management escort.

As a greeter, Mr. Peterson usually performed his duties at the front of the store. There are two doors at the front, one to enter and one to exit the store. As one enters the store, there is a shelving unit six feet high containing merchandise to the left. Mr. Peterson was usually situated some distance inside the store along the side where the shelving unit is. Customers can and do enter the store through either the entrance or the exit door. A customer entering the store through the exit door cannot be seen from the location where Mr. Peterson was situated. Mr. Peterson did not see anyone enter the store through the entrance door carrying a shotgun on December 13. If the customer with the shotgun had entered through the exit door, he would have passed behind Mr. Peterson on his way to the service counter.

Mr. Peterson had received prior warnings but none concerned firearm returns. He received a warning on May 24, 2003 for pushing carts too roughly and for complaining about having to attend safety meetings as a result of accidents at work. He received a warning on July 16, 2004 because of customer complaints. Two customers complained that Mr. Peterson had treated them differently because of their race. Mr. Peterson received a warning on August 7, 2004 because he was not greeting all customers.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Peterson 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). Before a disqualification may be imposed, the evidence must establish that the final act which triggered the discharge constituted misconduct within the meaning of the law. In other words, there must be a current act of misconduct. See 871 IAC 24.32(8). In the case at hand, the final conduct, which caused Mr. Peterson's discharge, was an allegation that he allowed a customer to enter the store with a firearm in violation of the employer's standards.

The employer's evidence failed to establish to the satisfaction of the administrative law judge that Mr. Peterson knowingly allowed the customer to enter the store with a shotgun on December 13. Given the layout of the store and where Mr. Peterson would have been located, it is very possible that the customer entered the store through the exit door and was unseen by Mr. Peterson. For the above reasons, it is concluded that the employer has failed to establish an act of misconduct on December 13. The next most prior warning was on August 7, 2004 and would not, therefore, represent a current act in relation to the December 13 discharge date.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that misconduct has not been established. 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 February 4, 2005, reference 01, is hereby affirmed. Mr. Peterson was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/sc