

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

SHAWN C EVANS
1101 CROCKER ST
DES MOINES IA 50309

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

WAL-MART STORES INC
1002 SE NATIONAL DR
ANKENY IA 50021

Appeal Number: 05A-UI-04149-CT
OC: 03/13/05 R: 02
Claimant: Respondent (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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 6, 2005, reference 01, which held that no disqualification would be imposed regarding Shawn Evans' separation from employment. After due notice was issued, a hearing was held by telephone on May 12, 2005. The employer participated by Sabrina Weber, Co-Manager. Exhibits One, Two, and Three were admitted on the employer's behalf. Mr. Evans did not respond to the notice of 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. Evans was employed by Wal-Mart from February 1 until

March 11, 2005. He worked full time in overnight maintenance. Approximately one week before his separation, Mr. Evans' supervisor met with him regarding complaints from two female coworkers. The two complained that Mr. Evans was following them around the store and that it made them uncomfortable. They also complained that Mr. Evans sought them out when he was on a meal break. Mr. Evans was warned to stop following the two associates and to remain on task to complete his assigned work.

The decision to discharge Mr. Evans was based on a report from one of the two females that he was continuing to follow her within the store. On the evening of March 10, he came to her area practically every hour for no reason related to his job responsibilities. When her work was completed, she went to women's apparel to shop and Mr. Evans appeared in the same area even though his job did not require him to be in the area. The female associate immediately left the store and reported Mr. Evans' conduct the following day. Mr. Evans was discharged on March 11, 2005.

Mr. Evans has been paid a total of \$588.00 in job insurance benefits since filing his claim effective March 13, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Evans 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. Evans was discharged for engaging in conduct that caused two of his female coworkers to be uncomfortable at work. His conduct bordered on stalking as he followed the two individuals within the store without any work-related justification. He was warned that his actions caused the females to be uncomfortable and was directed to stop. In spite of the warning and directive that he was to cease such conduct, Mr. Evans continued. He did not participate in the hearing to offer work-related reasons for repeatedly being in the work area of the female associate or for being in women's apparel while she was shopping there. Mr. Evans' continued conduct of following the females after being warned constituted a substantial disregard of the standards he knew the employer expected of him. Accordingly, it is concluded that disqualifying misconduct has been established by the evidence. As such, benefits are denied.

Mr. Evans has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 6, 2005, reference 01, is hereby reversed. Mr. Evans 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. Mr. Evans has been overpaid \$588.00 in job insurance benefits.

cfc/s