

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

JUSTIN P BREWER
210 E NORTH ST
MADRID IA 50156

WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 00283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01507-B4T
OC: 01-11-04 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

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 6, 2004, reference 01, that held, in effect, Justin P. Brewer was discharged from his employment with Wal-Mart Stores, Inc. on January 13, 2004 for no disqualifiable reason. Unemployment insurance benefits were allowed.

A telephone conference hearing was scheduled and held on February 26, 2004 pursuant to due notice. Justin P. Brewer responded to the notice of hearing with a late call by providing two telephone numbers where he could be contacted. Calls placed to both numbers were not answered by the claimant. The claimant left a message with a clerk at the Workforce Development office indicating he no longer needed unemployment insurance and hung up the

phone. The claimant did not participate in the hearing held. Richard Newman, Tire and Lube Express Manager at Ankeny, Iowa, participated on the behalf of Wal-Mart Stores, Inc. Amanda Capron, Support Manager, participated as a witness on behalf of the employer.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Justin P. Brewer was employed at a Wal-Mart Stores, Inc. facility in Ankeny, Iowa on or about July 24, 2002. The claimant performed the job duties as a service technician in the tire and lube express section.

The employer did not provide documentation regarding any rules or regulations that had been in place at the time of the claimant's discharge. During the tenure of the claimant's employment he was never warned in writing or verbally that his job was in jeopardy on any occasion for any incident relating to his termination of employment.

On July 11, 2003, Amanda Capron, Support Manager, indicated that she wanted tires to be taken to a disposal unit. The claimant offered to perform the job but Amanda Capron indicated she had assigned someone else to do the job. The claimant then left to perform the job duties that she had mentioned.

Amanda Capron claimed the claimant was insubordinate because he did not have authorization to leave the area and dispose of the tires. Subsequently on June 13, 2003 the claimant held a conversation with Richard Newman, Tire and Lube Express Manager. There was a discussion of alleged insubordination and the rules adopted by the employer. The claimant was then discharged from his employment because of the alleged insubordination on his part.

The record is clear that the claimant did not utilize any inappropriate language but merely performed a job that he desired to do without being authorized to do so by Amanda Capron.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (8) provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of

employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The evidence in the record does not establish that the claimant committed a deliberate act or an omission which would constitute a material breach of his duties and obligations arising out of his contract of employment. The claimant had never been warned that his job was in jeopardy either verbally or in writing prior to January 11, 2004. The incident which lead to the discharge of the claimant occurred on January 11, 2004. The claimant did not utilize in the course language or raise his voice in any manner to offend the Support Manager Amanda Capron. Although the claimant may not have been authorized to perform the job duties she was discussing with him, the conduct of the claimant constitutes unsatisfactory conduct or ordinary negligence in an isolated instance or a good faith error in judgment or discretion. Such conduct is not deemed misconduct within the intent and meaning of the forgoing section of the Iowa Administrative Code.

In addition, there is no record of any prior warnings or alleged instance of misconduct on the part of the claimant. Misconduct has not been established.

The administrative law judge concludes that Justin P. Brewer was discharged from his employment with Wal-Mart Stores, Inc. on January 13, 2004 within the intent and meaning of Iowa Code Section 96.5-2-a.

DECISION:

The unemployment insurance decision dated February 6, 2004 reference 01 is affirmed. Justin P. Brewer was discharged from his employment with Wal-Mart Stores, Inc. on January 13, 2004 for no disqualifiable reasons. Unemployment insurance benefits are allowed provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law.

sb/b