

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

ART SCHLUMBOHM
600 – 6TH ST NE
OELWEIN IA 50662-1318

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

Appeal Number: 06A-UI-03963-BT
OC: 03/12/06 R: 04
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. (employer) appealed an unemployment insurance decision dated March 28, 2006, reference 01, which held that Art Schlumbohm (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2006. The claimant participated in the hearing. The employer participated through Shawn Phelps, Store Manager and Angela Richards, Assistant Manager. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from December 3, 1998 through March 11, 2006, when he was discharged for falsifying his time record. He falsely reported that he took his lunch hour at 6:00 a.m. when he did not take it until 7:15 a.m.

The employer's work rules require employees to take a break after six hours of work. The claimant was not scheduled to work on March 5, 2006 but the employer needed some extra work done before the district manager's visit the next week so the claimant agreed to work. He clocked in at 12:17 a.m. and should have taken his lunch break at 6:17 a.m. However, at 6:17 a.m., the claimant was working with some steel pieces that were on the floor presenting a hazard to others. He tried to clean up the area before taking his lunch. The store manager and an assistant manager arrived at work and walked by the claimant. He was asked what time he came in and whether he had taken his break. After he said he had not taken his break, the assistant manager told him he was in trouble and the claimant stated that he was going to get into more trouble because he was going to clean up the area before going on break because it was a safety hazard. Neither manager directed the claimant to take his break immediately.

When the claimant was done cleaning near 7:15 a.m., he went to take his break but could not punch out since he was not punched in and had worked over six hours. Instead of tracking down a member of management, the claimant just sat down in the break room and took his break until approximately 8:00 a.m. He returned from break and worked until he was finished with the job at about 10:22 a.m. The claimant went back to the break room since there was a snowstorm and he was not quite ready to get out into it. The manager entered the break room and the claimant asked him whether he was supposed to come in earlier on Monday before the arrival of the district manager and the manager said that would be fine. The claimant worked early the next morning and nothing was said. He took the next four days off work because his wife was having surgery. When he returned to work, he was called to the office and the manager asked him if he filled out his time card the way he did so that he would not get in trouble and the claimant said, "Yes, you were there." The claimant was immediately discharged. The employer testified at the hearing that had the claimant wrote on his time card that he took a late lunch, he would probably have only been coached, but because he falsified the time card, he was fired.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for reporting that he took his break later than when he actually took it. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. The employer has not met its burden and work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 28, 2006, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/tjc