

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

SANDRA K HENDERSON
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HIAWATHA IA 52233

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

Appeal Number: 04A-UI-10935-DWT
OC: 04/11/04 R: 03
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 are 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:

Wal-Mart Stores, Inc. (employer) appealed a representative's October 1, 2004 decision (reference 08) that concluded Sandra K. Henderson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Christine Henderson, the front-end manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of April 11, 2004. The employer hired the claimant to work on July 14, 2004. The claimant was hired to work as a part-time cashier. The employer hired new employees as probationary employees for 90 days.

During the claimant's first 90 days of work, she left work early on July 30, she did not report to work or call the employer on August 18 and she was written off the schedule on August 20, 2004. The employer also talked to the claimant about a \$168.15 cash shortage on July 24. On September 4, the claimant did not report to work or notify the employer she would not be at work as scheduled. The employer called the claimant. The claimant reported she had taken Nyquil the night before and had overslept but would report to work in a couple of hours. The claimant did not report to work. On September 5, the claimant confessed that she had gone out the night before and had been in no condition to work because of a hangover she had on September 4.

The employer discharged the claimant on September 5. The employer discharged the claimant because she had too many drawer errors, 14 during her employment, and because of her failure to report to work as scheduled.

The claimant reopened her claim for benefits during the week of September 5, 2004. The claimant has not received any benefits because she is disqualified from receiving benefits based on another employment separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for two main reasons. The first, having too many drawer errors, does not constitute work-connected misconduct because the employer did not establish that the claimant's errors were done intentionally. The second reason, the claimant's attendance or failure to work as scheduled, amounts to work-connected misconduct.

As a probationary employee, the claimant knew or should have known the employer would be evaluating her reliability and dependability as an employee. The claimant did not report to work or notify the employer she was unable to work two times. The most recent occurred on September 4 when the claimant had a hang over from drinking too much the night before. The

claimant's failure to report to work as scheduled on September 4 by itself amounts to work-connected misconduct because the claimant decided to party so much the night before she did not get up in time to work and was too ill to work on September 4. Without any explanation from the claimant, the evidence establishes that the employer discharged the claimant for reasons amounting to work-connected misconduct. As of September 5, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 1, 2004 decision (reference 08) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 5, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/tjc