

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CHAD J HENDERSON
Claimant

APPEAL NO. 07A-UI-09114-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/19/07 R: 04
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated September 14, 2007, reference 01. The decision allowed benefits to the claimant, Chad Henderson. After due notice was issued, a hearing was held by telephone conference call on October 9, 2007. The claimant participated on his own behalf. The employer participated by Co-Manager Matt Vagher. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Chad Henderson was employed by Wal-Mart from December 7, 2006 until August 16, 2007, as a part-time maintenance person. During the course of his employment, he received a verbal warning, a written warning, and a final decision making day, for various work performance issues. He was advised the decision making day was the final disciplinary step prior to discharge.

On August 15, 2007, the claimant was seen by Assistant Manager Antonio Alfaro taking excessive breaks. He was working 5:00 p.m. to 11:00 p.m. and was entitled to a 30-minute lunch break or two 15-minute breaks, and he knew the policy. When questioned by the employer, he acknowledged he had taken both a paid break and an unpaid 30-minute lunch break that same evening. This was a violation of the break policy and resulted in a written warning. This was the last step in the disciplinary procedure and he was also discharged.

Chad Henderson has received unemployment benefits since filing a claim with an effective date of August 19, 2007.

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 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 claimant had been advised his job was in jeopardy as a result of the progressive disciplinary procedure. The final incident was taking more breaks than he was entitled to on a six-hour shift, taking both a 30-minute and a 15-minute break, which was not in accordance with a known company policy. The claimant did not deny taking the extra break but merely maintained he did not know what he was signing when he was discharged, although he also stated the manager had explained the form to him. The administrative law judge found the claimant's testimony to be inconsistent and lacking in credibility. He was discharged for conduct not in the best interests of the employer and is disqualified.

DECISION:

The representative's decision of September 14, 2007, reference 01, is reversed. Chad Henderson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$354.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw