

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

IGNACIO CANTUA
45 HOLIDAY LODGE
NORTH LIBERTY IA 52317

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

Appeal Number: 04A-UI-12371-CT
OC: 10/24/04 R: 03
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. filed an appeal from a representative's decision dated November 8, 2004, reference 01, which held that no disqualification would be imposed regarding Ignacio Cantua's separation from employment. After due notice was issued, a hearing was held by telephone on December 15, 2004. Mr. Cantua participated personally. The employer participated by Steven Applebee, Store Manager. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Cantua was employed by Wal-Mart from September 20, 2000 until October 22, 2004. He was last employed full-time in floor maintenance. Mr. Cantua was discharged based on allegations of sexual harassment and inappropriate conduct.

On or about October 14, 2004, a female employee complained that she had been told that Mr. Cantua was making inappropriate remarks about her to a coworker. There had been no prior complaints from any associate about Mr. Cantua engaging in inappropriate conduct. As a result of the complaint received on October 14, the employer conducted an investigation. Others reported that Mr. Cantua had been making comments of a sexual nature in Spanish and had taught other associates certain inappropriate phrases in Spanish. There were also reports that he made comments about female employees' body parts. The employer was given four written statements on the condition that the writers remain anonymous.

The employer first spoke with Mr. Cantua about the allegations on October 18, at which time he denied them. After the investigation was concluded, Mr. Cantua was discharged on October 22. The above allegations were the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cantua 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. Cantua was discharged based on allegations of sexual harassment and inappropriate conduct in the workplace. The employer's evidence consists solely of anonymous hearsay. Without knowing who the individuals are, there is no opportunity to test the reliability of their allegations. The administrative law judge appreciates the employer's desire to maintain the anonymity promised to the individuals who made statements. However, anonymity weakens the employer's evidence as it gives Mr. Cantua no opportunity to challenge the credibility of the witnesses against him. Although

hearsay testimony is admissible, the administrative law judge is not inclined to give weight to anonymous hearsay testimony.

Mr. Cantua denied the allegations of inappropriate conduct. He worked for Wal-Mart for four years without any allegations of harassment or inappropriate conduct. Given this history and the lack of any direct testimony regarding misconduct, the administrative law judge concludes that the employer has failed to establish its contentions with competent evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 8, 2004, reference 01, is hereby affirmed. Mr. Cantua was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/