

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

JAMES R MIRANDA
233 – 8TH ST SE
MASON CITY IA 50401

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

Appeal Number: 05A-UI-03984-CT
OC: 03/13/05 R: 02
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 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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 4, 2005, reference 01, which held that no disqualification would be imposed regarding James Miranda's separation from employment. After due notice was issued, a hearing was held by telephone on May 5, 2005. The employer participated by Al Brady, District Loss Prevention. Exhibits One and Two were admitted on the employer's behalf. Mr. Miranda did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Miranda was employed by Wal-Mart from August 28, 2002 until February 23, 2005. At the time of separation, he worked full time as a support manager in the tire and lube department. Mr. Miranda was discharged for theft of property belonging to Wal-Mart.

Mr. Miranda took merchandise from the Wal-Mart shelves, deactivated whatever security device was on the merchandise and then removed or allowed others to remove the merchandise from the store without making payment. He began removing merchandise shortly before Christmas of 2004. He removed such items as X-Box games, DVD players, cordless power tool kits, an Atari game, a radar detector, and a variety of other items. Mr. Miranda sold some of the items and kept others for himself. On February 22, 2005, he signed a statement acknowledging his theft. His theft was the sole reason for the discharge.

Mr. Miranda has received a total of \$1,048.00 in job insurance benefits since filing his claim effective March 13, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Miranda 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. Miranda was discharged for theft of merchandise from the store where he worked. Such conduct is clearly contrary to the standards an employer has the right to expect. It constitutes misconduct sufficient to sustain a disqualification from benefits.

Mr. Miranda has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 4, 2005, reference 01, is hereby reversed. Mr. Miranda was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Miranda has been overpaid \$1,048.00 in job insurance benefits.

cfc/sc