

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

SHAYNE L LOVELADY
1228 EAST SENECA APT 7
DES MOINES IA 50315

WAL-MART STORES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08349-JTT
OC: 07/17/05 R: 02
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 filed a timely appeal from the August 5, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 30, 2005. Assistant Store Manager Mike Eivens represented the employer and presented additional testimony from Overnight Manager Dan Wells. The claimant did not respond to the hearing notice instructions, did not provide a telephone number for the hearing, and did not participate. Exhibits One through Three were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shayne Lovelady was employed by Wal-Mart as a full-time overnight grocery stocker through

July 18, 2005, when Overnight Manager Dan Wells discharged him for misconduct. Mr. Lovelady had worked at the store for one-and-a-half to two years.

The final incident that prompted Mr. Wells to discharge Mr. Lovelady occurred on July 18, 2005. Mr. Lovelady started his shift at 10:00 p.m. Mr. Lovelady took a 15-minute paid sometime between 10:00 p.m. and 1:30 a.m. At 1:30 a.m., Mr. Wells called a lunch break for the overnight stockers so that they could eat pizza he had provided. Wal-Mart requires employees to clock out for lunch. Mr. Lovelady was aware of the policy. Mr. Lovelady did not clock out when he went with his coworkers to the break room to eat pizza. Mr. Lovelady was in the break room eating pizza for 45 minutes. At 3:00 a.m., Mr. Lovelady clocked out for a 30-minute lunch break. Mr. Wells had prior concerns about Mr. Lovelady's productivity and was actually monitoring Mr. Lovelady's time use during the shift in question. Mr. Wells concluded that Mr. Lovelady had engaged in "theft of time" in violation of the employer's written policy during the 45 minutes he had consumed pizza while on the clock.

Mr. Lovelady's prior reprimands had been as follows. On October 17, 2004, Mr. Lovelady received a verbal warning for 21-minute break when he was only authorized to take a 15-minute break. On October 21, 2004, Mr. Lovelady had received a written warning for excessive absences. On November 8, 2004, Mr. Lovelady received a "Decision Day" for clocking out at the end of his shift without completing his work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Lovelady was discharged for misconduct in connection with his employment.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act to misconduct, a discharge her misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that Mr. Lovelady engaged in misconduct on July 18, 2005 by not clocking out for what was, in fact, a lunch break. However, the misconduct in question does not rise to the level of substantial misconduct that would disqualify Mr. Lovelady for unemployment insurance benefits. The administrative law judge has considered the final incident of misconduct in light of the prior reprimands, and concludes the prior warnings to not provide any reason to conclude that the final misconduct was substantial enough to disqualify Mr. Lovelady for benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Lovelady was discharged for no disqualifying reason. Mr. Lovelady is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Lovelady.

DECISION:

The Agency representative's August 5, 2005, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kjw