

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

DANIEL J CALVERT
1009 – 7TH AVE S
CLINTON IA 52732

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

Appeal Number: 04A-UI-08239-CT
OC: 07/04/04 R: 04
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 July 20, 2004, reference 01, which held that no disqualification would be imposed regarding Daniel Calvert's separation from employment. After due notice was issued, a hearing was held by telephone on August 20, 2004. Mr. Calvert participated personally. The employer participated by Dennis Purcell, Co-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. Calvert was employed by Wal-Mart from September 27, 2000 until July 5, 2004. He was employed full time as a cart-pusher. He was discharged for failing to perform his assigned duties. Mr. Calvert's primary job duty was to collect carts from the employer's eight corrals outside the store and bring them into the store. If he was working alone, he was to make sure that carts were always available on both the grocery side of the store as well as the general merchandise side. On occasion, Mr. Calvert would have to assist a customer with bottle and can returns behind the courtesy counter. He might also be called upon to assist customers in taking their purchases to their vehicles.

On August 20, 2003, Mr. Calvert received a warning after he was observed talking with coworkers while not on a break. There were carts in the area designated for handicapped parking and trash on the lot and around the building. Mr. Calvert was admonished to monitor the lot continuously throughout his shift to make sure carts were retrieved and trash picked up. On January 4, 2004, Mr. Calvert received another written warning. He had allowed both the grocery and the general merchandise sides of the store run out of carts on January 2. On March 19, 2004, Mr. Calvert received another written warning. It was noted that, when it was time for him to leave for the day, the corrals in the lot were full and there were several carts in the parking lot that were not in the corrals.

The decision to discharge Mr. Calvert was based on the fact that he again failed to perform his duties on July 5. He failed to retrieve carts before he went on break. When questioned by the employer, he indicated he forgot. He was discharged the same day.

Mr. Calvert has received a total of \$543.00 in job insurance benefits since filing his claim effective July 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Calvert 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Calvert received three warnings before discharge regarding his failure to perform the essential functions of his job. His primary job was to retrieve shopping carts from the parking lot and bring them into the store. All he had to do in this regard was monitor the number of carts both inside and outside the store. Retrieving carts was not a task he was to perform if he had time after performing other duties, it was his primary duty. In spite of several warnings, Mr. Calvert did not perform his job in the manner he knew the employer expected. He clearly had the ability to perform the job in the manner desired and knew that his continued employment was in jeopardy because of his failures to meet the employer's expectations. Mr. Calvert's failure to perform his job on a consistent basis constituted a substantial disregard of the standards he knew the employer expected of him.

After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has been established by the evidence and benefits are denied. Mr. Calvert 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 July 20, 2004, reference 01, is hereby reversed. Mr. Calvert 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. Calvert has been overpaid \$543.00 in job insurance benefits.

cfc/kjf