

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

BENJAMIN B SAMBUL  
2051 SE KING AVE  
DES MOINES IA 50320

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

Appeal Number: 04A-UI-11186-CT  
OC: 09/12/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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 October 5, 2004, reference 01, which held that no disqualification would be imposed regarding Benjamin Sambul's separation from employment. After due notice was issued, a hearing was held by telephone on November 10, 2004. The employer participated by Courtney Hilton, Electronics Department Manager, and Patricia Danylchuk, Assistant Manager. Exhibits One and Two were admitted on the employer's behalf. Mr. Sambul did not respond to the notice of hearing.

#### 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. Sambul was employed by Wal-Mart from May 29, 2002 until September 9, 2004 as a full-time sales associate. He was discharged because of his attendance. He was late reporting to work on at least ten occasions between January and March 13, 2004. There were a number of occasions on which he was absent for unknown reasons. Mr. Sambul received written warning about his attendance prior to August 11, 2004.

Mr. Sambul was absent without notice on August 11, 12, 14, and 15. Rather than discharge him, the employer gave him a "decision-making" day to decide if he wanted to continue working for Wal-Mart and, if so, what he intended to do to preserve his employment. The decision to discharge was due to the fact that Mr. Sambul was two hours late on or about September 8, 2004 because his car broke down. He was notified of his discharge on September 9, 2004.

Mr. Sambul has received a total of \$2,128.00 in job insurance benefits since filing his claim effective September 12, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sambul 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). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Mr. Sambul knew his continued employment with Wal-Mart was in jeopardy by virtue of the warnings he received. In spite of the warnings, he was absent from four consecutive shifts without notice to the employer in August. He knew from the "decision-making" day that he was being given one final chance to preserve his employment with Wal-Mart. In spite of this, Mr. Sambul was two hours late on September 8 because of car trouble. Given his extensive history of tardiness, dating back to 2003, the administrative law judge concludes that the final tardiness should be considered unexcused as it was due to a matter of purely personal responsibility, transportation. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Because he had been repeatedly warned about his attendance, Mr. Sambul's four unreported absences and his tardiness of September 8 are sufficient to establish excessive unexcused absenteeism within the meaning of the law. Therefore, benefits are denied. Mr. Sambul 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 October 5, 2004, reference 01, is hereby reversed. Mr. Sambul 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. Sambul has been overpaid \$2,128.00 in job insurance benefits.

cfc/tjc