

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

ERIC D WILSON  
2516 S RUSTIN #A  
SIOUX CITY IA 51106

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

Appeal Number: 05A-UI-11692-CT  
OC: 10/16/05 R: 01  
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, 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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated November 3, 2005, reference 01, which held that no disqualification would be imposed regarding Eric Wilson's separation from employment. After due notice was issued, a hearing was held by telephone on December 5, 2005. Mr. Wilson participated personally and offered additional testimony from Dave Woodard. The employer participated by Mike Jefferson, Assistant Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wilson was employed by Wal-Mart from June 1,

2003 until August 28, 2005. He was last employed full time as an overnight stocker. He was discharged because of safety violations and his attendance.

On July 5, 2005, Mr. Wilson was given a "decision-making" day after he was observed standing on a moving pallet. He acknowledged that he knew such conduct was contrary to the employer's safety standards. The final incident that caused the discharge occurred on August 28, 2005. Mr. Wilson was attempting to get to a machine used to push lines of shopping carts from outside to inside. There were motorized shopping carts in the way and, therefore, he stepped on the seat of one as he was stepping over it to get to the cart-pusher. The conduct was witnessed by management and was considered an unsafe act. Mr. Wilson was notified of his discharge on August 28, 2005.

In making the decision to discharge, the employer also considered Mr. Wilson's attendance history. His last absence was on July 29, 2005 and was due to illness. He had been late on ten occasions since December 1, 2004, the last of which was August 5, 2005. Mr. Wilson's last warning about attendance was on September 21, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Wilson 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). Part of the reason for Mr. Wilson's discharge was his attendance. However, the last absence was on July 29 and was due to illness. The last occasion of tardiness was on August 5. Although Mr. Wilson had ten occasions of tardiness after his warning for attendance on September 21, 2004, the employer took no further steps to discipline him as a result of repeated tardiness. Therefore, Mr. Wilson had reason to believe that his occasional tardiness was tolerated by the employer.

Mr. Wilson acknowledged that he violated the employer's standards by standing on a pallet while it was being moved on July 5. However, his conduct of August 28 did not evince a willful or wanton disregard of the employer's safety standards. Mr. Wilson stepped on the seat of a motorized cart while stepping over it. Although he may have used poor judgment, he did not deliberately violate safety standards. For the above reasons, the administrative law judge concludes that the conduct of August 28 did not constitute an act of misconduct.

Inasmuch as the final conduct that precipitated the discharge did not constitute misconduct, the administrative law judge is not free to consider other, past acts that might constitute misconduct. For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

#### DECISION:

The representative's decision dated November 3, 2005, reference 01, is hereby affirmed. Mr. Wilson was discharged by Wal-Mart but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/s