

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 A WILSON III
301 S 5TH ST APT 314
AMES IA 50010

WAL-MART STORES NIC
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166

Appeal Number: 05A-UI-04925-JTT
OC: 03/20/05 R: 02
Claimant: Appellant (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

STATEMENT OF THE CASE:

James Wilson filed a timely appeal from the May 4, 2005, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on May 31, 2005. Mr. Wilson participated. Assistant Manager William Hackbarth represented Wal-Mart. Exhibits One through Five were received into evidence.

FINDINGS OF FACT:

James Wilson was employed by Wal-Mart as a full-time cashier from November 6, 2001, until September 16, 2004, when Assistant Manager William Hackbarth discharged him for misconduct. Mr. Wilson worked the overnight shift.

The final incident that prompted the discharge came to the employer's attention on September 15, 2004, when Mr. Hackbarth learned that Mr. Wilson had used inappropriate language to complete a form used to address cash register variances. Mr. Wilson's register had been short \$29.72 on September 4. On September 7 Wal-Mart's cash office issued him a questionnaire to complete regarding the shortage. When the cash office did not receive an immediate response from Mr. Wilson, it issued him a second questionnaire on September 8. Mr. Wilson did not work on September 7 or 8 and therefore received the forms when he returned for shift on September 9. Only one form needed to be submitted to Wal-Mart's cash office. On the form that was issued September 7, Mr. Wilson provided wisecracking responses. Mr. Wilson did not sign this form and did not intend for this form to be submitted to the cash office. On the form that was issued September 8, Mr. Wilson provided appropriate responses. Mr. Wilson signed this form, and intended to submit it to the cash office. Mr. Wilson did not provide the form with the wisecracking response to the cash office and is not certain who did. After his shift on September 9, Mr. Wilson did not work again until September 16, at which time he was discharge from the employment.

Mr. Wilson had received two prior reprimands, but neither was for behavior similar to the final incident.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Wilson was discharged for misconduct in connection with his employment. It does not.

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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes that Mr. Wilson exercised poor judgment during his shift on September 9-10, 2004, by providing wisecracking responses on a questionnaire that he had no intention of sharing with his employer. The employer was within its legal right to discharge Mr. Wilson. However, Mr. Wilson's conduct did not rise to the level of substantial misconduct necessary to disqualify him from unemployment insurance benefits. See 871 IAC 24.32(1)(a). Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wilson was discharged for no disqualifying reason. Mr. Wilson is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's decision dated May 4, 2005, reference 03, is reversed. 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 to the claimant.

jt/kjw