

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

NICHOLAS J DEBROWER  
362 – 20<sup>TH</sup> ST SE  
CEDAR RAPIDS IA 52403

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

Appeal Number: 04A-UI-05461-CT  
OC: 04/18/04 R: 03  
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 May 3, 2004, reference 01, which held that no disqualification would be imposed regarding Nicholas DeBrower's separation from employment. After due notice was issued, a hearing was held by telephone on June 8, 2004. Mr. DeBrower participated personally. The employer participated by Bradley Neperud, General Manager.

#### 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. DeBrower was employed by Sam's Club, a subsidiary of Wal-Mart, from November 11, 2000 until April 16, 2004. He was last employed full time as a marketing sales representative, a position he had held for approximately one month at the time of separation. He was discharged because of offensive and inappropriate conduct at work.

On April 12, Mr. DeBrower was working around Amanda and Vicky when he told them he needed to go to the bathroom. He told them he needed help going to the bathroom because of his size, an apparent reference to his genitals. This comment was reported to the supervisor the same day. Amanda also reported an exchange she had had with Mr. DeBrower in the stairwell when he asked for a piece of her cookie. He said his hands were dirty and, when she asked why, he said because they had been in her mother. The supervisor reported these complaints to management on April 15 and an investigation was conducted. Other employees stated that Mr. DeBrower used profanity on a regular basis. When the employer spoke with him on April 16, Mr. DeBrower denied making the comments attributed to him by Amanda but did acknowledge that he had used the word "cunt" on one occasion while on duty. As a result of the complaints received on April 15, Mr. DeBrower was discharged on April 16, 2004.

Mr. DeBrower has received a total of \$1,761.00 in job insurance benefits since filing his claim effective April 18, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. DeBrower 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. DeBrower was discharged as a result of the complaint filed by two female coworkers. He denied making any inappropriate comment to Amanda in the stairwell. He could not recall making the statement referencing the size of his genitals. Given his acknowledgement of having used the word "cunt" on one occasion, the administrative law judge believes it more likely than not that he did, in fact, make the statements Amanda attributed to him. His use of a word such as "cunt" makes it more believable that he would make other inappropriate comments.

Mr. DeBrower knew or should have known that making comments of a sexual nature, especially around female coworkers, was contrary to the standards the employer expected of him. His inappropriate sexual references constituted a substantial disregard of the employer's interests as they could have resulted in sexual harassment claims against the employer. For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

Mr. DeBrower 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 May 3, 2004, reference 01, is hereby reversed. Mr. DeBrower 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. DeBrower has been overpaid \$1,761.00 in job insurance benefits.

cfc/kjf