

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

DENNIS M WIEST
870 KANE ST
DUBUQUE IA 52001

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

Appeal Number: 04A-UI-01885-B4T
OC: 01-04-04 R: 04
Claimant: Respondent (5)

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

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 11, 2004, reference 02, that held, in effect, Dennis M. Wiest was discharged from his employment with Wal-Mart Stores, Inc. on January 9, 2004 for no disqualifiable reason. Unemployment insurance benefits were allowed. A telephone conference hearing was scheduled and held on March 8, 2004, pursuant to due notice. Dennis M. Wiest participated. Brian Hoag, Co-Manager at Dubuque, Iowa, participated on behalf of Wal-Mart Stores, Inc. Wally Herding, Store Manager, was designated to participate as a witness but was not available at the time of the hearing held.

Official notice was taken of the unemployment insurance decision, bearing reference 02, together with the pages attached thereto (5 pages in all). Employer's Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having examined all the evidence in this record, finds that: Dennis M. Wiest was employed at a Wal-Mart Stores, Inc. in Dubuque, Iowa, on May 22, 2001. The claimant acknowledged receipt of an employee handbook. Rude or abusive conduct toward a customer or an associate could constitute immediate grounds for a discharge.

On December 29, 2003, the claimant allegedly made a remark concerning a female coworker. The claimant denied making the statement and no witnesses who heard the statement were called to testify during the hearing. Written statements of Robert Norton and Dale Weekly were apparently presented to the employer concerning the alleged incident. Neither witness was called to testify and no one participated in the hearing that had any knowledge of the incident that allegedly occurred. The claimant's testimony that he did not make a derogatory statement concerning a female coworker is believable.

The claimant had reported Robert Norton to management for offensive conduct in his opinion and no action was taken by management to prevent further incidents from taking place.

The claimant's last day of work on the job was January 4, 2004. On January 5, 2004, the claimant held a conversation with Wally Herding, Store Manager. At that time, the claimant was informed he made a derogatory or offensive statement concerning a female coworker. The claimant denied making the statement at that time and was not provided with any information concerning the alleged incident that took place.

The claimant was then discharged from his employment for violating the company rules.

REASONING AND CONCLUSIONS OF LAW:

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).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer had failed to provide detailed facts as to the specific reasons for the claimant's discharge. The employer had ample opportunity to provide documentation regarding the alleged incidents and to call witnesses to testify at the hearing. The employer failed to do so and did not establish misconduct as that term is defined above.

The administrative law judge concludes that Dennis M. Wiest was discharged from his employment with Wal-Mart Stores, Inc. on or about January 5, 2004 for no disqualifiable reason within the intent and meaning of Iowa Code Section 96.5-2-a.

DECISION:

The unemployment insurance decision dated February 11, 2004, reference 02, is modified with respect to the termination of employment date. Dennis M. Wiest was discharged from his employment with Wal-Mart Stores, Inc. on or about January 5, 2004 for no disqualifiable reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law.

tjc/b