

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

TOBY R SNYDER
1069 DALLAS AVE
SIOUX CITY IA 51108

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

RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372

Appeal Number: 04A-UI-04952-A
OC: 04-04-04 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, 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:

Wal-Mart Stores, Inc. filed a timely appeal from an unemployment insurance decision dated April 19, 2004, reference 01, which allowed benefits to Toby R. Snyder. After due notice was issued, a hearing was held in Sioux City, Iowa on September 22, 2004 with Mr. Snyder participating and being represented by Richard Sturgeon. General Manager Tom Conrady participated for the employer. Employer Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Toby R. Snyder was employed by Wal-Mart Stores, Inc. from April 9, 1999 until he was discharged March 31, 2004. He last worked as a freezer/cooler merchandiser. Mr. Snyder was the friend of a husband and wife who both worked at the Sam's Club at which he worked. The couple was experiencing difficulties in their marriage. The wife asked Mr. Snyder if he had any insights as to the nature of the problem or what could be done about the problem. Mr. Snyder shared with her some comments which had been made to him by her husband. She did not ask Mr. Snyder to stop, and she thanked him for the information. No one was close enough to overhear the comments which he made. Nevertheless, the female employee reported the conversation to company management on or about February 16, 2004. Mr. Snyder was discharged on March 31, 2004 because management concluded that his comments constituted harassment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Snyder was discharged for misconduct in connection with his work. 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).

Although a statement contained in Exhibit 1 indicates that Mr. Snyder initiated the conversation in question, the author of the statement was not called to testify. Mr. Snyder testified under oath, subject to questioning by the administrative law judge and cross-examination by the employer, that he did not initiate the conversation but only responded to a request from the female employee. He testified without contradiction that no other person overheard the conversation and that the female employee did not ask him to stop his comments while he was speaking. From this, the administrative law judge concludes that the employer has not established by a preponderance of the evidence that Mr. Snyder initiated a conversation which he reasonably could have assumed would be viewed as harassment by the complaining employee. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated April 19, 2004, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

b/tjc