

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DAVID L STANFIELD
Claimant

APPEAL NO. 07A-UI-03666-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 03/18/07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, David Stanfield, filed an appeal from a decision dated April 4, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 25, 2007. The claimant participated on his own behalf. The employer, Wal-Mart, participated by Co-Manager Andy Eckstrom.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

David Stanfield was employed by Wal-Mart from October 12, 2005 until March 19, 2007, as a full-time sales associate. He received a copy of the employee handbook and the updated attendance policy during the course of his employment. The progressive disciplinary policy calls for a verbal warning, a written warning, a decision-making day and discharge if all three levels occur within a 12-month period. One or more disciplinary steps may be skipped if the infraction is serious enough.

The claimant received his first level of discipline in May 2006, as a written warnings, skipping the verbal warning because of the seriousness of the infraction. The decision-making day was for attendance problems and given on January 21, 2007. He was warned not to miss any more work for at least three months.

On Sunday, March 18, 2007, the claimant called in absent from work due to “personal problems.” This was considered unexcused and warranted another written warning. He was discharged by Assistant Manager Chris McKinley on March 19, 2007, for a fourth disciplinary step in a 12-month period.

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).

The claimant had been advised his job was in jeopardy as a result of the progressive disciplinary procedure. The final occurrence was an absence due to personal problems. Matters of purely personal consideration are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for violations of the company policies, including absenteeism, after being warned. This is conduct not in the best interests of the employer.

DECISION:

The representative's decision of April 4, 2007, reference 01, is affirmed. David Stanfield is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs