

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

ERIC L HESSE
124½ - 1ST ST SW APT B
WAVERLY IA 50677

WAL-MART STORES
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03264-DWT
OC 02/01/04 R 03
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 are 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. (employer) appealed a representative's March 10, 2004 decision (reference 02) that concluded Eric L. Hesse (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2004. The claimant participated in the hearing. No one on the employer's behalf responded to the hearing notice by providing a phone number in which to contact the employer's witness for the hearing.

After the hearing was closed and the claimant had been excused, the employer's representative contacted the Appeals Section. The employer's representative requested that the hearing be reopened. Based on the employer's request to reopen the hearing, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2000. The claimant worked as a sales associate.

During his employment, the employer talked to the claimant about attendance problems. On January 21, 2003, the claimant received a written warning for his attendance. The employer warned the claimant the next level of discipline would be a decision day or termination. On May 16, 2003, the employer gave the claimant his final written warning or a decision day for taking too many breaks during a scheduled shift.

On February 2, 2004, the employer received a customer complaint about the claimant. A customer reported the claimant had treated him rudely. Since the claimant already had a decision day, the employer discharged him on February 3, 2004.

The employer received the hearing notice prior to the scheduled 11:00 a.m. hearing on April 15. The employer did not contact the Appeals Section until 12:50 p.m. or after the hearing had been closed and the claimant had been excused. The employer's witness and the employer's representative had communication breakdown. Both assumed the other person was going to contact the Appeals Section to provide the phone number and name of the employer's witness. Neither person contacted the Appeals Section. The first time anyone on the employer's behalf contacted the Appeals Section was April 15 at 12:50 p.m. The employer's representative made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

The employer did not participate in the hearing because the employer's unemployment insurance representative and the employer's representative did not communicate effectively one another. Each individual made incorrect assumptions. The result was that neither person followed the hearing instructions. This is a problem the employer and its representative must resolve. The employer's failure to follow the hearing instructions even under these circumstances does not amount to good cause to reopen the hearing. Therefore, the employer's request is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Since the claimant had been warned about other problems, attendance and taking too many breaks which resulted in the claimant's receipt of a final written warning, the employer just took the next disciplinary step on February 3, 2004 and discharged the claimant. Pursuant to the employer's progressive disciplinary procedure, the record shows the employer had compelling reasons for discharging the claimant. The record does not indicate the employer previously counseled the claimant about any customer complaints for being rude. While the employer seriously considered all customer complaints, the record does not establish that the claimant was intentionally rude to any customer. There is no evidence the claimant deliberately treated customers disrespectfully or in a rude manner. The customer complaint the employer received may have occurred because the claimant used poor judgment in a particular instance or the customer may have perceived the claimant's actions differently than in the way the claimant had intended. The claimant did not intentionally disregard the employer's interests and he did not commit a current act of work-connected misconduct. Therefore, as of February 1, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's March 10, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 1, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf