NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2004

JORGE L. RODRIGUEZ,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-811
WAL-MART ASSOCIATES, INC., and FLORIDA UNEMPLOYMENT APPEALS COMMISSION,	**	LOWER TRIBUNAL NO. 02-77040
Appellees.	**	

Opinion filed January 21, 2004.

An appeal from the Florida Unemployment Appeals Commission.

Jorge L. Rodriguez, in proper person.

John D. Maher (Tallahassee), Deputy General Counsel, for appellee Commission.

Before SCHWARTZ, C.J., and COPE and WELLS, JJ.

PER CURIAM.

Jorge L. Rodriguez appeals an order denying unemployment benefits. We conclude that disqualifying misconduct was not

demonstrated and reverse the order now before us.

In August of 2000, the appellant-employee was counseled for making personal calls on company time. In September, the employee was counseled for failing to enter certain optical prescriptions in the computer, rather than handwriting the prescriptions. He also failed to collect remaining balances on lay-away purchases of eyeglasses. In October the employee was discharged for deteriorating job performance after the above referenced counseling.

"In defining misconduct, courts are required to liberally construe the [unemployment compensation] statute in favor of the employee." Mason v. Load King Manufacturing, Mfg. Co., 758 So. 2d 649, 654 (Fla. 2000) (citations omitted); § 443.031, Fla. Stat. (2000). Subsection 443.036(29), Florida Statutes (2000), defines disqualifying misconduct:

> (29) "Misconduct" includes, but is not limited to, the following, which shall not be construed in pari materia with each other:
>
> (a) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his or her employee; or
>
> (b) Carelessness or negligence of such a degree or recurrence as to manifest 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 his or her employer.

"In general, mere unsatisfactory work performance will not

result in a denial of benefits." Brownstein v. Hartwell Enterprises, Inc., 647 So. 2d 1004, 1005 (Fla. 3d DCA 1994) (citations omitted); see also Doyle v. Florida Unemployment Appeals Commission, 635 So. 2d 1028, 1031 (Fla. 2d DCA 1994).

Accepting the referee's characterization that there was deteriorating job performance, it still would not rise to the level of disqualifying misconduct under the statutory definition of misconduct, or the case law. Accordingly we reverse the order denying unemployment compensation benefits.

Reversed and remanded.