

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMIE J FOSTER**  
Claimant

**APPEAL NO. 14A-UI-04154-S2T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/26/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jamie Foster (claimant) appealed a representative's April 15, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Wal-Mart (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 8, 2014. The claimant participated personally. The employer participated by Jim Peterson, Weekend Receiving Operations Manager, and Pam Lasswell, Human Resources Office Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 18, 1998, as a full-time unloader processor working Friday, Saturday, and Sunday. The employer did not issue the claimant any warnings during her employment. The claimant hauled pallets and scanned each one she hauled. The employer kept track of the claimant's haul rate.

On March 1, 2014, the employer noticed the claimant's haul rate was high. On March 2, 2014, the employer discussed the rate with the claimant. It asked the claimant if she actually hauled 100 stacks of pallets in addition to her other hauls. The claimant initially said she did. After being reminded of the cameras in the facility, the claimant admitted she scanned pallets she did not haul. The claimant signed a statement to that effect. On her next scheduled work day, March 7, 2014, the employer terminated the claimant for falsification of her production rate.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. *Smith v. Sorensen*, 222 Nebraska 599, 386 N.W.2d 5 (1986). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**AMENDED DECISION:**

The representative's April 15, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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