

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JEFFERY WISE**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL NO. 14A-UI-03216-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/23/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated March 12, 2014, (reference 01), which held that Jeffery Wise (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2014. The claimant participated in the hearing. The employer participated through Emily Pettit, Shift Manager; Heather Snyder, Human Resources Manager; and Ryan Flanery, Employer Representative. Employer's Exhibits One through Three were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**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 employed as a part-time frozen dairy stocker from October 23, 2007, through February 11, 2014, when he was discharged for violation of company policy. The employer has a Violence-Free Workplace Policy and a Discrimination and Harassment Prevention Policy, which the claimant was made aware of at the time of hire. The policies prohibit violence, the threat of violence, offensive physical contact, and physical touching or assault.

The claimant violated both policies at approximately 7:00 p.m. on February 9, 2014, when he physically pushed a co-worker out of his way. The co-worker was a high school student and worked on a part-time basis. The claimant was frustrated because he had left to look for a piece of equipment to move the egg pallet but when he returned, the co-worker had already completed the work. The claimant said the door could not be shut because the co-worker was standing in the way so he pushed the co-worker out of the way. The co-worker reported the

claimant's actions to the employer. The claimant provided a written statement in which he admitted he pushed the co-worker to get him out of the way.

The claimant filed a claim for unemployment insurance benefits effective February 23, 2014, and has received benefits after the separation from employment in the amount of \$548.00. The employer did not personally participate in the fact-finding interview but did submit 17 pages of documents addressing the reasons for the discharge.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on February 11, 2014 for violation of company policies. The employer has an interest and duty in protecting the safety of all of its employees. The claimant's physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of the employer and the safety of its employees and is disqualifying misconduct even without a prior warning. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the discharge. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$548.00.

**DECISION:**

The unemployment insurance decision dated March 12, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid benefits in the amount of \$548.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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