

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

JASON R JONES  
PO BOX 754  
LOMAX IL 61454-0754

WAL-MART STORES INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-05012-RT  
OC: 04/04/04 R: 04  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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 is 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 for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated April 20, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Jason R. Jones. After due notice was issued, a telephone hearing was held on May 26, 2004, with the claimant participating. Ben Utoft, Tire Manager, participated in the hearing for the employer. Dan Davis, Co-Manager, and Donald Sentowski, Co-Manager, were available to testify for the employer, but not called because their testimony was unnecessary and would have been repetitive. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time service technician from August 3, 2003 until he was discharged on March 3, 2004. The claimant was discharged for improper destruction or disposal of employer's property. The employer has a rule in its handbook a copy of which the claimant received, for which he signed an acknowledgement, and for which he was aware, prohibiting the destruction of the employer's property or assets. Approximately, one week before the claimant's discharge, the claimant threw at least 15 valve stems away when he emptied a box containing the valve stems into the trash. Some of the valve stems were in good working order or condition. The claimant only looked at the valve stems and did not examine them to see if they were in good working order. The employer observed this on videotape and the valve stem box was always in the camera's view and the claimant never closely examined the valve stem. When the claimant was confronted about this matter, he was given an opportunity to explain but did not and was discharged.

Pursuant to his claim for unemployment insurance benefits filed effective April 4, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,140.00 as follows: \$190.00 per week for six weeks from benefit week ending April 10, 2004 to benefit week ending May 15, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Ben Utoft, Tire Manager, credibly testified that he observed a videotape of the claimant emptying a box of valve stems into the employer's trashcan without examining them. The box, at all material times, was in view of the video camera and then the claimant came in to the view of the camera, took the box, and emptied it into the trash. Mr. Utoft later retrieved 7-10 of the valve stems and they were in good working condition. The claimant conceded that he threw away approximately 15 valve stems. He testified that he did so because they were bad, but this part of his testimony is not credible. The claimant first testified that he examined the valve stems and noted that they were bad and threw them away. Later, the claimant conceded that he only looked at the valve stems in the box and did not examine them to see if they were good, but figured that the whole box was bad and threw the whole box away. The administrative law judge does not understand why the claimant would empty the remaining valve stems in a box believing they were all bad if it was only a partial box indicating that at least the valve stems that had been in the box were acceptable. Further, although given an opportunity to explain his actions, the claimant did not do so and had no reason why he didn't. The administrative law judge must conclude on the evidence here, and in view of the claimant's lack of credibility, that the claimant threw away good working order valve stems. Therefore, the administrative law judge concludes that the claimant's act was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces willful or wanton disregard of the employer's interests and is disqualifying misconduct. The administrative law judge might understand if the claimant had closely examined each valve stem and threw them away, but here the claimant just looked at them and then emptied the remaining valve stems in the box into the trash. This is more than just ordinary negligence in an isolated instance or a good faith error in judgment or discretion.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,140.00 since separating from the employer herein on or about March 3, 2004 and filing for benefits effective April 4, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision dated April 20, 2004, reference 01, is reversed. The claimant, Jason R. Jones, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. The claimant is overpaid unemployment insurance benefits in the amount of \$1,140.00.

kjf/b