

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

KATHY M GLASS-MILLER  
311 WROBLE DR  
MARION IA 52302

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

Appeal Number: 05A-UI-06506-CT  
OC: 05/15/05 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, 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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated June 10, 2005, reference 02, which held that no disqualification would be imposed regarding Kathy Glass-Miller's separation from employment. After due notice was issued, a hearing was held by telephone on July 11, 2005. Ms. Glass-Miller participated personally. The employer participated by Adrienne Kindheart, Assistant Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Glass-Miller was employed by Wal-Mart from April 19, 2003 until May 6, 2005. She was at all times a customer service manager. She worked as a cashier as necessary. On May 6, the employer met with Ms. Glass-Miller because she had performed an override on her own register rather than have another manager do it.

During the meeting of May 6, the employer also discussed reports that Ms. Glass-Miller was sometimes rude, disrespectful, and unpleasant. At the conclusion of the meeting, she was asked for her vest and nametag and was escorted to the front door. Ms. Glass-Miller presumed she had been discharged.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Glass-Miller was separated from employment for any disqualifying reason. The employer's request that she turn in her nametag and vest was a clear indication that she no longer had employment with Wal-Mart. It is concluded, therefore, that the separation was initiated by the employer and shall be considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Ms. Glass-Miller was discharged because she performed an override on her own register rather than having another manager do it. She had performed overrides on her own register in the past without repercussions. Therefore, it was reasonable for her to assume that she was not violating any rule or policy. The employer failed to establish that Ms. Glass-Miller deliberately and intentionally engaged in conduct she knew to be contrary to the employer's interests or standards. For the above reasons, it is concluded that disqualifying misconduct has not been established by the evidence. Accordingly, no disqualification is imposed.

#### DECISION:

The representative's decision dated June 10, 2005, reference 02, is hereby affirmed. Ms. Glass-Miller was discharged by Wal-Mart but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc