

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS J GIACOPELLO**  
Claimant

**APPEAL NO. 11A-UI-02470-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/02/11**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 22, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 23, 2011. Claimant participated. Employer participated through asset protection coordinator, Cindy King.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as an overnight stocker and was separated from employment on December 30, 2010. On December 21, 2010 he took a box of Red Baron pizza without paying for it. He went to the time clock, clocked out for lunch, then went to the break room, heated it up, and ate it. There were no records of him paying for it at any time during the day. The employer reviewed other video surveillance and found that he regularly did the same on December 20, 13, 12, 6, November 29, 28, 27, 22, 15, 7, and 6, 2010. He admitted taking the food items without paying for them. He was living in his car at the time and was hungry but did not ask his supervisor for assistance or permission. The employer has a poster in the break room with a telephone number for employee assistance and that information is covered in orientation. Claimant did not avail himself of that resource either.

The administrative law judge (ALJ) gave claimant the 211 number to reach <http://www.centerforsiouxland.org/> via the internet or by phone at (712) 252-1861 extension 19. Calling 2-1-1 provides free and confidential information and referral for help with food, housing, employment, healthcare, counseling and more.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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.

Claimant's repeated theft of food from his employer was misconduct sufficient to warrant a denial of benefits.

**DECISION:**

The February 22, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css