

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

KENNETH L CAMERON
1744 W 4TH ST
DAVENPORT IA 52802

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

Appeal Number: 05A-UI-00972-RT
OC: 12-26-04 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, 4th 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 January 18, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Kenneth L. Cameron. After due notice was issued, a telephone hearing was held on February 14, 2005 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Dale Wright, Assistant Manager of store no. 5115 in Davenport, Iowa, participated in the hearing for the employer. Employer's Exhibits 1 through 3 were admitted into evidence. 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 witness 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 over night frozen stocker from October 14, 2003 until he was discharged on December 17, 2004. The claimant was discharged for forging the name of his supervisor, Gary Sheldon, Overnight Assistant Manager, on various time adjustment reports filed by the claimant. These time adjustment reports appear at Employer's Exhibit 2. Whenever an employee wants to be paid either for hours worked and for which he forgot his I.D. or did not punch in and, therefore, was not on the employer's official time, or when the claimant was absent for an excusable reason and wanted to be paid, the employee fills out a time adjustment request. It must be signed by the employee's supervisor. The claimant prepared ten time adjustment requests in November and December of 2004 but forged the signature of his supervisor, Gary Sheldon. Mr. Sheldon signed none of the claimant's time adjustment requests. Mr. Sheldon's own signature appears at the last time adjustment request for a coworker on the third page of Employer's Exhibit 2. His signature there does not compare to any of the signatures on the claimant's time adjustment requests. The claimant was not discharged for filing for time that he did not work but for forging the signature. The employer's policies require honesty and, further, provide that falsification of company records can result in immediate termination. The claimant received a copy of these rules and policies and signed an acknowledgement, all as shown at Employer's Exhibit 3. When the claimant was confronted by the employer, the claimant admitted filling out the documents but stated he had no recollection of who signed them. Pursuant to his claim for unemployment insurance benefits filed effective December 26, 2004, the claimant has received unemployment insurance benefits in the amount of \$426.00 as follows: \$180.00 per week for two weeks, benefit weeks ending January 1 and January 8, 2005; no benefits for benefit week ending January 15, 2005 (earnings \$364.00); \$66.00 for benefit week ending January 22, 2005 (earnings \$159.00); and no benefits for benefit week ending January 29, 2005 (earnings \$269.00). This total amount was offset against an overpayment from 2000 still leaving a balance over paid for 2002 of \$268.00.

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).

The employer's witness, Dale Wright, Assistant Manager for store no. 5115 in Davenport, Iowa, where the claimant was employed, credibly testified, and the administrative law judge concludes, that the claimant was discharged on December 17, 2004. 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 employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Mr. Wright credibly testified that on ten time adjustment requests, as shown at Employer's Exhibit 2, the claimant forged the signature of his supervisor, Gary Sheldon. These forgeries occurred in November and December. Mr. Sheldon did not sign the time adjustment requests. The employer has strict policies about honesty and falsification of company records. Although the claimant worked the time that he said he worked, he forged the signatures. In the absence of any evidence of explanation or in the absence of any evidence to the contrary, the administrative law judge concludes that these acts by the claimant were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct. Therefore, 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 \$426.00 since separating from the employer herein on or about December 17, 2004 and filing for such benefits effective December 26, 2004. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 18, 2005, reference 02, is reversed. The claimant, Kenneth L. Cameron, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$426.00.

tjc/kjf