

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A HENDERSON
Claimant

APPEAL NO: 09A-UI-03048-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/04/09
Claimant: Respondent (2/R)

Section 96 .5-2-a - Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 12, 2009 decision (reference 03) that concluded Mark A. Henderson (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 18, 2009. The claimant participated in the hearing. Brenda McGowan, an assistant manager, Johnna Lehman and Denise Oswald appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 19, 2008. The claimant worked as a full-time cashier. Lehman and McGowan supervised the claimant.

On December 20, 2008, McGowan saw the claimant pick up a package of pens and put them in a sack in a back room. During his break, McGowan observed the claimant pick up a wallet and put it in his pocket. McGowan followed the claimant and saw him place the wallet in the same sack that contained the pens. Later in the afternoon, another employee observed the claimant pick up another wallet, but the claimant did not put the second wallet in the sack with the pens and first wallet.

Since McGowan did not see the claimant pay for either item, she and another employee stationed themselves by the exit doors at the end of the claimant's shift. The claimant had the sack with the pens and wallet with him when he left work. McGowan stopped the claimant and accused him of stealing the pens and wallet. The claimant, however, asserted he had paid for the pens and wallet on a previous day. The claimant did not have a receipt indicating he had

already paid for the pens or wallet. The employer suspended the claimant on December 20, 2008, for taking the employer's merchandise without paying for it. McGowan told the claimant he could not return to work until he talked to the store manager.

After suspending the claimant, the employer checked the computer records to see if any pens or wallet had been purchased that day or any time prior to December 20, 2008. The employer's computer record did not indicate any purchase of the pens or wallet the claimant had in his sack.

The claimant, the store manager and the market asset manager did not meet until January 6, 2009. During this meeting, the claimant gave the employer a resignation notice that the employer did not accept. After talking about taking merchandise without paying for it, the employer understood the claimant admitted he took the wallet without paying for it. The employer discharged the claimant on January 6, 2009, for taking the employer's merchandise without paying for it.

The claimant filed for and received benefits since January 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's assertion that he paid for the pens and a wallet the employer observed him take off the floor and put into a sack sometime before December 20 at another Wal-Mart store is not credible. The claimant could not prepay for pens and a wallet he wanted at his store at the Coralville Wal-Mart store. Although the claimant denied he took the pens or wallet on December 20, 2008 without paying for them, he did not have a receipt and he did not tell the employer about purchasing either item earlier at the Coralville store. The claimant's explanation as to what he did not is not logical or credible. A preponderance of the credible evidence establishes the claimant took a package of pens and a wallet from the employer's store on December 20, 2008, and attempted to leave work without paying for either item. The claimant's actions on December 20, 2008, amount to a substantial and intentional disregard of the standard of behavior the employer has a right to expect from an employee. On January 6, 2009, the employer discharged the claimant for reasons constituting work-connected misconduct.

Since the claimant has filed for and received benefits since January 4, 2009, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's February 12, 2009 decision (reference 03) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 4, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of whether the claimant has been overpaid or is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs