

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON J KAISER

Claimant

APPEAL NO. 09A-UI-01392-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 12/14/08 R: 03
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 20, 2009, reference 01, which held that no disqualification would be imposed regarding Brandon Kaiser's separation from employment. After due notice was issued, a hearing was held by telephone on February 17, 2009. Mr. Kaiser participated personally. The employer participated by Laurie McDermott, Assistant Manager. Exhibits One through Eight were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Kaiser was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kaiser was employed by Wal-Mart from December 4, 2007 until November 29, 2008. He was last employed full time as an associate in the dairy department. He was discharged for misuse of his employee discount.

Mr. Kaiser was issued an employee discount card on or about January 4, 2008. He also received the employee handbook that outlines the rules for use of the discount. The discount is limited to the Wal-Mart associate, the associate's spouse, and any minor child of the associate. On or about November 24, 2008, the employer learned that Mr. Kaiser had allowed his mother and grandmother to use his employee discount. The two made separate transactions and Mr. Kaiser's discount was applied to each one. The discounts amounted to approximately \$17.00. He was notified of his discharge on November 29, 2008.

Mr. Kaiser filed a claim for job insurance benefits effective December 14, 2008. He has received a total of \$2,259.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Kaiser was discharged from employment. 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. Mr. Kaiser was discharged because he misused his employee discount card. The employer's policy, a copy of which had been provided to him, clearly outlines who is eligible to use the discount. The policy does not state that any family member is eligible, only the spouse and minor children of the associate.

It appears that Mr. Kaiser did not read the terms for use of the discount. However, it was his responsibility to be familiar with the policies he was required to follow. His conduct in allowing his mother and grandmother to have the benefit of his discount was clearly contrary to the policy he was expected to know. His actions constituted theft, as it resulted in a monetary loss to the employer. Theft is clearly contrary to the type of behavior an employer has the right to expect. For the reasons cited herein, the administrative law judge concludes that misconduct has been established. As such, benefits are denied.

Mr. Kaiser has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Kaiser will be required to repay benefits already received.

DECISION:

The representative's decision dated January 20, 2009, reference 01, is hereby reversed. Mr. Kaiser was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Kaiser will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw