

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

JANALYN E STEFFENS
APT 3
1601 ABER AVE
IOWA CITY IA 52246

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

Appeal Number: 05A-UI-05387-DT
OC: 05/30/04 R: 03
Claimant: Appellant (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, 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

STATEMENT OF THE CASE:

Janalyn E. Steffens (claimant) appealed a representative's May 13, 2005 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 9, 2005. The claimant participated in the hearing. Patrick Moeller appeared on the employer's behalf and presented testimony from one other witness, Amy Ferin. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 17, 2004. She worked full time as a cashier at the employer's Coralville, Iowa store. Her last day of work was April 24, 2005. The employer discharged her on that date. The stated reason for the discharge was taking and eating food without first paying for it.

On April 24, 2005, the claimant was scheduled to report for work at 2:00 p.m. She came to the store at approximately 1:30 p.m. Ms. Ferin, the in-store loss prevention associate, witnessed the claimant going to the deli area, picking a pudding dessert container from a shelf, and then taking the dessert to the back break room, where she consumed the dessert and threw away the container. She had not paid for the dessert before consuming it.

Ms. Ferin reported her observation to Mr. Moeller, the assistant manager, who confronted the claimant. When asked if she had paid for the dessert, the claimant initially said that she had, but upon further questioning, she admitted that she had not paid for it before eating it, asserting that there had been no one at the deli counter register and that she had seen the front lane lines were very long. She asserted that she had intended on paying for the dessert at her break time. When asked how she was going to pay for it at break when she had thrown away the container, she responded that she would have taken a new container to the register and would have told the cashier to ring it up twice. The employer did not find this explanation acceptable, and discharged the claimant.

The claimant had previously taken a box of cold medication and taken some medication, showing her supervisor and another manager what she was doing and announcing to them that she had not yet paid for the medicine but would do so at her break. The supervisor vigorously told her that it was not allowed, and could be considered stealing. The manager also instructed the claimant to go back and get her money to pay for the medicine then instead of waiting.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code §96.5-2-a.

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 claimant's consuming the dessert before paying for it, especially after specifically being advised that such behavior was not allowed, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's May 13, 2005 decision (reference 05) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 24, 2005. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

ld/pjs