

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN L ALLEN
Claimant

APPEAL NO. 10A-UI-10927-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/13/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 23, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 18, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Jack Shepard participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as an automotive service technician for the employer from November 12, 2008, to June 12, 2010. The claimant had been placed on a decision-making day, which is the last stage of the disciplinary policy, on April 30, 2010, for having excessive unapproved absences. He knew his job was in jeopardy. The claimant was informed and understood that under the employer's work rules, service technicians were not allowed to service their own vehicles or those of family members.

Around June 12, 2010, the claimant brought in his own vehicle into the shop and serviced it without permission from a supervisor. Another technician reported this to the supervisor, who confirmed it by viewing surveillance video. When the supervisor asked the claimant about it, he said he had the time and thought he could do it.

The employer discharged the claimant on June 12, 2010, for violating the work rule against servicing your own vehicle.

The claimant filed for and received a total of \$1,070.00 in regular unemployment insurance benefits for the weeks between June 13 and July 17, 2010.

The claimant provided a telephone number to be called for the hearing, but forgot about the hearing and did not answer the phone at the time of the hearing. He called back in at 9:00 a.m. after the hearing record was closed.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether there is good cause to reopen the hearing as required by 871 IAC 26.8(4). The evidence does not show good cause to reopen the hearing, as the claimant forgot about the hearing.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 23, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw