

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

JEFF E ELLIOTT
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VINTON IA 52349

WAL-MART STORES INC
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 6166-0283

Appeal Number: 04A-UI-03767-DWT
OC 02/29/04 R 03
Claimant: Respondent (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 are 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:

Wal-Mart Stores, Inc. (employer) appealed a representative's March 23, 2004 decision (reference 01) that concluded Jeff E. Elliott (claimant) was qualified to receive unemployment insurance 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 April 26, 2004. The claimant participated in the hearing. Allan Jensen, the store manager, 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 23, 2002. He worked as a full-time sales associate. Employees receive a discount card, but only employees and authorized people are allowed to use an employee's discount card. The employer does not consider a girlfriend an authorized person.

On December 9, 2003, the claimant and his girlfriend did some Christmas shopping at the employer's store. The claimant and his girlfriend went to the checkout counter together. The claimant wanted gift receipts for two items. The claimant wrote two checks for the items he wanted gift receipts. The claimant and his girlfriend picked out a VHS tape as a Christmas gift for a relative that was from both of them. The cashier accepted the claimant's girlfriend's check for \$25.47 for the VHS tape. The claimant used his employee discount for this purchase also and received a discount of \$2.70.

On December 10, 2003, the employer's cash office received a "red flag" that the claimant's discount card had been used but someone else had paid for the item purchased. The employer did not say anything to the claimant or ask him what had happened. Instead, the employer waited to review cash register transactions and the employer's surveillance tapes to determine if the claimant had misused his discount card.

On December 29, 2003, the employer talked to the claimant for the first time about the December 9 VHS tape transaction. The employer discharged the claimant on December 29 for violating the employer's discount card policy by allowing an unauthorized person to use his discount card.

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 §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer established business reasons for discharging. Since the claimant's girlfriend wrote the check to pay for VHS tape on December 9, technically the claimant allowed his girlfriend to receive an unauthorized discount. In this case though, the VHS tape was also a gift from the claimant; he was present when they both went through checkout counter, and the cashier

accepted the discount card and the girlfriend's check without any questions. Under the facts of this case, the evidence does not establish that the claimant intentionally misused his discount card. He did not intentionally or substantially disregard the employer's rules.

The evidence suggests there is a question as to whether the December 9 transaction is a current act. While the store manager or management may not have known about the December 9 incident until December 15 or 16, the employer did not say anything to the claimant about the transaction until December 29. The employer asserted business reasons for waiting so long to say anything to the claimant and the employer has the right to do so. However, for unemployment insurance benefits, before a claimant can be disqualified from receiving benefits, his discharge must be based on a current act. It is questionable as to whether the December 9 incident should be considered a current act. Since the claimant did not commit work-connected misconduct, the issue of whether the incident that led to the claimant's discharge is a current act does not need to be resolved in this case.

DECISION:

The representative's March 23, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b