

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLEE C NICHOLS

Claimant

APPEAL NO. 09A-UI-19080-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/12/09

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 December 8, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 29, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Diane Barton participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing. Exhibit 2 consisting of the letter sent certified mail to the claimant informing her about the results of the drug test and her right to have split sample tested was submitted after the hearing and is entered into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an order filler from August 18, 2008, to November 13, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including random testing, and were subject to termination if they tested positive for drugs.

Pursuant to the policy, the claimant was required to submit to a random drug test on November 6, 2009. A urine sample was properly taken from the claimant and properly analyzed using an initial drug screen test and subsequent confirmatory test by a certified laboratory. The analysis was positive for marijuana in violation of the employer's policy.

The results were reviewed by a medical review officer who contacted the claimant to determine if there any prescriptions she was taking or some other explanation for the positive test. He certified the results were due to illegal use of marijuana.

After the employer received the results of the drug test, the employer sent a letter to the claimant by certified mail informing her of the positive test result and her right to have the split

sample test and the cost for having that test done. The claimant never requested that the split sample be tested.

The claimant was discharged by the employer on November 13, 2009, for violating the employer's drug and alcohol policy.

The claimant filed for and received a total of \$3,234.00 in unemployment insurance benefits for the weeks between November 15, 2009, and January 30, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 evidence establishes that the drug testing was conducted in compliance with Iowa's drug testing law, Iowa Code § 730.5.

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 December 8, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she 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/css