

**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**

**JEANETTE M VANHOVE
1109 DIVISION ST ROOM #5
BOONE IA 50036**

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

**Appeal Number: 04A-UI-06557-DWT
OC: 05/09/04 R: 02
Claimant: Respondent (2)**

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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's June 3, 2004 decision (reference 02) that concluded Jeanette M. VanHove (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 9, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Rich King, the store manager, and Meggan O'Neill, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 14, 2003. Prior to her separation, the claimant worked as a part-time cashier. When the claimant started working, she received a copy of the employer's policies. One of the employer's policies informs employees that if they fail to contact the employer and do not report for three consecutive days, the employer considers the employee to have voluntarily terminated the employment.

Prior to March 22, 2004, the claimant called in a number of times to report she was unable to work as scheduled. The claimant's job was not in jeopardy prior to March 26.

On March 22, the claimant worked as scheduled. On March 23, the claimant notified the employer she was ill and unable to work. The claimant was scheduled to work on March 26, 27 and 28. She did not report to work or notify the employer that she was unable to work any of these days.

On April 8, 2004, the claimant went to the employer's store to pick up her check. She learned the employer no longer considered her an employee because she had not contacted the employer since March 23, 2004.

The claimant established a claim for unemployment insurance benefits during the week of May 9, 2004. She filed a claim for unemployment insurance benefits during the week ending May 15, 2004 and received \$50.00 in benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. Since the claimant contacted the employer on April 8, the evidence does not establish that she intended to quit her employment. Instead, the employer initiated the separation and ended the employment relationship on April 8, 2004.

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 claimant knew or should have known she would not have a job if she failed for three consecutive days to contact the employer and report she was unable to work as scheduled.

The claimant's failure to contact the employer or report to work from March 26 through April 8 amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of March 9, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the week ending May 15, 2004. She has been overpaid \$50.00 in benefits she received for this week.

DECISION:

The representative's June 3, 2004 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 9, 2004. This disqualification continues until she 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. The claimant is not legally entitled to receive benefits for the week ending May 15, 2004 and has been overpaid \$50.00 in benefits he received for this week.

dlw/kjf