

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLAYTON J SANOW**  
Claimant

**APPEAL NO. 08A-UI-08417-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 07/20/08 R: 01  
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 September 10, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 7, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Christensen 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 full time for the employer as an automotive service technician from June 3, 2003, to July 15, 2008. He was informed and understood that under the employer's work rules, he was not allowed to service his own vehicle or a family member's vehicle or handle the service tickets for such service. The employer's work rules also require that employees pay for any merchandise purchased or service performed on their vehicles. On September 13, 2005, the claimant received a warning for taking pastry from the bakery without paying for it.

On June 30, 2008, the claimant violated the employer's policy by repairing a flat tire on his daughter's vehicle without paying for the service. On July 14, 2008, the claimant brought in a vehicle that he was considering purchasing and performed an oil change on the vehicle. He failed to pay for the service. The employer's loss prevention specialist reported to the store on July 15 to investigate the claimant's performing service on his daughter's vehicle and failing to pay for it. In the process, the loss prevention specialist discovered the oil change that had been done on July 14. When confronted about these transactions, the claimant untruthfully reported that he had forgotten to pay for the service.

The employer discharged the claimant for his conduct on June 30 and July 14, 2008.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 20, 2008. He filed for and received a total of \$1,722.00 for the weeks between July 20 and the September 20, 2008.

### **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 section 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant admitted that he knew that the rules prohibited him working on his own vehicle or a family member's vehicle. His testimony that he forgot to pay on each of these occasions is not credible.

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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

### **DECISION:**

The unemployment insurance decision dated September 10, 2008, 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 determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs