

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE LEYTEM

Claimant

APPEAL NO. 08A-UI-04271-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 03-30-08 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 22, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 19, 2008. The claimant participated in the hearing. Amy Todd, Assistant Manager and Micki Volkenant, Assistant Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time deli associate for Wal-Mart from March 14, 2006 to April 3, 2008. On March 30, 2008, the claimant completed a time adjustment sheet because she forgot to clock in. After the employer reviewed the video tape it noticed the claimant wrote that she arrived at 4:05 a.m. when she actually arrived at 4:20 a.m. The claimant had received a decision-making day for insubordination with her lead manager February 5, 2008, after she was disrespectful and defiant. She was accused of refusing to do what her lead manager asked. On November 29, 2007, she received a written warning for failure to show respect to a vendor after she argued with him. On November 7, 2007, she received a verbal warning for failure to show respect to co-workers by talking about associates behind their back in a negative way. On October 24, 2007, and March 10, 2008, she received personal discussions about her attendance after an absence for a funeral February 22, 2008, and being tardy February 10, 2007; March 31, 2007; July 18, 2007; July 20, 2007; July 23, 2007; August 1, 2007; August 12, 2007; October 14, 2007; October 20, 2007; February 3, 2008; February 9, 2008; and March 2, 2008. Under the employer's policy three tardies equal one absence and incidents of absenteeism drop off after a six-month rolling period so several of the claimant's incidents of tardiness did not count. The claimant said she wrote the wrong time because she "forgot" she was late or what time she came in when she did her time adjustment sheet but the employer

considered it an integrity issue and terminated her employment. She knew her job was in jeopardy because of her previous coachings.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant testified she did not remember she was late March 30, 2008, her explanation is not as credible as the employer's in this situation. She completed a time adjustment sheet showing she arrived at 4:05 a.m. when the video surveillance showed she arrived 20 minutes late. The employer's policy allows employees to be 14 minutes late and the claimant exceeded that time limit and then falsified her timecard to avoid an attendance coaching. Her actions were not a minor peccadillo but were, as the employer indicated, an integrity issue. The claimant had received previous warnings and a decision-making day and knew or should have known her job was in jeopardy. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a

willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 22, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$158.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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