

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY M NEE
Claimant

APPEAL NO. 08A-UI-08889-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/03/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dorothy M. Nee (claimant) appealed a representative's September 30, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on October 20, 2008. The claimant participated in the hearing. Carol Mullihan 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 12, 2006. As of approximately the end of January 2008 she worked full time as a deli sales associate at the employer's Altoona, Iowa store. Her last day of work was August 5, 2008. The employer discharged her on that date. The stated reason for the discharge was theft.

On July 26 the employer discovered the claimant had measured out some meat for herself at a cost of \$1.16, printed out a sticker with that price, then added additional meat, so that the total value of the meat was \$4.52, then measured out some cheese for herself at a cost of \$.71, printed out a sticker with that price, then added additional cheese, so that the total value of the cheese was \$4.63. Her supervisor later found the packages in the cooler, thought they looked like they weighed more than they were labeled, and reweighed them. This was then reported to the employer's asset protection department. In further investigation the employer discovered about five times in July in which the claimant could be seen in video surveillance weighing out meat or cheese for herself, printing out labels, then adding additional product before sealing the package and setting it aside for later purchase.

When the claimant was confronted on August 5, she initially denied doing anything wrong, but subsequently admitted that money was tight and that she had “padded” her meat and cheese purchase at least five times for an estimated value of \$60.00. As a result of this, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's theft of company property by “padding” her meat and cheese measurements for her personal purchases shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee even without prior warning, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer, for which even a single incident would be misconduct. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's September 30, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 5, 2008. This disqualification continues until the

claimant 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css