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

KIMBERLY M BIERY
Claimant

APPEAL NO. 08A-UI-01400-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/06/08   R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 31, 2008, reference 01, which held that no disqualification would be imposed regarding Kimberly Biery's separation from employment. After due notice was issued, a hearing was held by telephone on February 25, 2008. The employer participated by Steve Hinsley, Club Manager. Exhibits One, Two, and Three were admitted on the employer's behalf. Ms. Biery did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Biery was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Biery was employed by Sam's Club, a division of Wal-Mart, from March 30, 2001 until January 10, 2008. She was last employed full time as team leader in the membership department. She was discharged due to theft.

The employer decided to send gift card donations to non-profit entities that were club members. Ms. Biery was responsible for getting the cards to the various organizations. She could have them come to the store and pick up the gift cards or she could mail or hand-deliver them. Approximately one week before her separation, the employer discovered that Ms. Biery had made personal purchases using three of the gift cards earmarked for non-profit groups. She used two cards that were in $50.00 denominations and a third card that was for $25.00.

Ms. Biery was observed on surveillance tape using one of the gift cards at Wal-Mart. She used the remaining two at Sam's Club. The employer was able to verify her use of the cards at Sam's Club because they were associated with her club membership number.   When questioned by the employer, Ms. Biery did not deny using the cards but indicated they had somehow become mixed in with other gift cards in her possession. She did not have any

affiliation with the non-profit groups for whom the cards were intended. The above matter was the sole reason for the January 10, 2008 discharge.

Ms. Biery filed a claim for job insurance benefits effective January 6, 2008. She has received a total of $1,284.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Biery was discharged for theft. She took three gift cards that were intended as donations for non-profit groups and used them to make personal purchases. Her theft of $125.00 from her employer was clearly contrary to the type of behavior the employer had the right to expect.

The administrative law judge concludes that substantial misconduct has been established by the evidence. As such, benefits are denied. Ms. Biery has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 31, 2008, reference 01, is hereby reversed. Ms. Biery was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Biery has been overpaid $1,284.00 in job insurance benefits.

_____
Carolyn F. Coleman
Administrative Law Judge

_____
Decision Dated and Mailed

cfc/css