

**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**

**KATHY J LEAMING
2403 E 34TH ST
DES MOINES IA 50317**

**WAL-MART STORES INC
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-07089-CT
OC: 06/12/05 R: 02
Claimant: Respondent (1)**

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 is 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 for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated June 28, 2005, reference 01, which held that no disqualification would be imposed regarding Kathy Leaming's separation from employment. After due notice was issued, a hearing was held by telephone on July 28, 2005. Ms. Leaming participated personally. The employer participated by Aaron Forsythe, Assistant Manager. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Leaming was employed by Wal-Mart from August 8,

2001 until June 9, 2005. She was employed full time as a clerk and last worked in sporting goods. She was discharged because of cash shortages attributed to her.

The Wal-Mart location where Ms. Leaming worked is open around the clock. The cash register in the sporting goods department begins the day at 7:00 a.m. with a \$75.00 balance. The register is not reconciled until 11:00 p.m. During the day, all employees working in the department use the same register drawer. The employer alleged that Ms. Leaming had cash shortages of \$20.00 on one occasion and \$100.00 on another occasion. The dates of the shortages are unknown. Ms. Leaming was never warned about shortages. She did not take any money belonging to Wal-Mart. The cash shortages were the sole reason given for Ms. Leaming's discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Leaming was separated from employment for any disqualifying reason. 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). It is incumbent upon the employer to provide specific details concerning the reason for discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 24.32(4). Ms. Leaming was discharged based on an allegation that she had cash shortages and that she pocketed the money represented by the shortages. The employer did not provide sufficient evidence to establish either contention.

Various employees accessed the cash register in Ms. Leaming's department during the work day and it was not reconciled between shifts. The employer did not produce evidence that Ms. Leaming, and only Ms. Leaming, was the cause of the shortages. The individual who concluded that Ms. Leaming was responsible did not participate in the hearing to explain how the shortages were traced to Ms. Leaming. The employer did not have information as to when the shortages occurred. Therefore, the administrative law judge cannot even determine if the shortages represented current acts of misconduct. There was no testimony establishing that Ms. Leaming pocketed money from the register.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated June 28, 2005, reference 01, is hereby affirmed. Ms. Leaming was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw