

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REJOICE I SAID

Claimant

APPEAL NO. 07A-UI-04159-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 04-01-07 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from an unemployment insurance decision dated April 13, 2007, reference 01, that allowed benefits to Rejoice I. Said. After due notice was issued, a telephone hearing was held May 10, 2007 with Assistant Manager Kollin Kirby participating for the employer. Employer Exhibit One was admitted into evidence. The claimant did not provide a telephone number at which she could be contacted.

ISSUES:

Was the claimant discharged for misconduct in connection with her employment?
Must the claimant re-pay the unemployment insurance benefits she has received?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Rejoice I. Said was employed by Wal-Mart Stores, Inc. from June 10, 2006 until she was discharged February 20, 2007. She was an overnight maintenance worker. On February 18, 2007, Ms. Said was in the employee lounge, sitting in one chair and resting her feet in another. An associate who was four months pregnant at the time came into the lounge, moved Ms. Said's feet and sat down. Ms. Said then kicked the associate, knocking her out of the chair. The company sent the associate to the hospital as a precautionary matter. This incident was the final one leading to Ms. Said's discharge. She had also received warnings for working on scheduled days off, resulting in unnecessary overtime being paid, and failing to clock out for lunch until after she had gone through the check-out line to purchase her meal. Ms. Said has received unemployment insurance benefits since filing a claim effective April 1, 2007.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant did not participate in the hearing, the employer's evidence has not been contradicted. It establishes that Ms. Said kicked a pregnant employee, knocking her out of a chair and causing her to be sent to the hospital. This alone would be sufficient to establish misconduct. Nevertheless, the evidence also establishes prior warnings for matters of attendance and payroll integrity. Benefits are withheld.

Iowa Code section 96.3-7 requires that unemployment insurance benefits paid in error must be repaid to the Agency. The evidence here establishes that Ms. Said received benefits during a period for which she has been disqualified. The benefits must be repaid.

DECISION:

The unemployment insurance decision dated April 13, 2007, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,465.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs