

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

CHRIS R SHAFFER  
950 DANIELS ST NE  
CEDAR RAPIDS IA 52402

WAL-MART STORES INC  
c/o FRICK UC EXPRESS  
P O BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-04472-HT  
OC: 03/21/04 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated April 7, 2004, reference 01. The decision allowed benefits to the claimant, Chris Shaffer. After due notice was issued a hearing was held by telephone conference call on May 12, 2004. The claimant participated on his own behalf. The employer participated by Personnel Manager Jennie Ressler and Store Manager Scott Niernberger.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Chris Shaffer was employed by Wal-Mart from August 3, 1999 until March 19, 2004. He was a full-time photo lab technician.

On March 18, 2004, the claimant went through the checkout line to pay for some photos. The sticker on the envelope said the price was \$5.96, but when the cashier scanned it, it rang up at 94 cents. The claimant said that was not the right price and the cashier scanned it again, with the same result. He suggested the cashier call someone in the photo lab but the suggestion was declined. The claimant paid the amount rung up and left the store because he was in a hurry.

The cashier reported to the loss prevention manager, who consulted with Kelly Moore, a co-manager. The claimant was interviewed and he said he had no idea why the photos rang up at the lower price but did offer to go home and get the envelope to show it had been properly marked with the price. The employer declined and discharged the claimant.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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).

The employer has failed to establish by any testimony or evidence that the claimant willfully and deliberately altered the sticker on the photos in order to pay a lower price. At most he committed an error of judgment by not leaving the photos and paying for them on another day when he had more time to deal with the problem. He did inform the cashier it was not the correct price but the cashier allowed the transaction to be completed as scanned rather than call the photo lab manager or a manger on duty. There is no evidence of misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of April 7, 2004, reference 01, is affirmed. Chris Shaffer is qualified for benefits provided he is otherwise eligible.

bgh/s